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No. [redacted] Original

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN OPPOSITION TO MOTION OF MEXICO, CHIHUAHUA FOR LEAVE TO INTERVENE.

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 12 ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN OPPOSITION TO MOTION OF MASSACHUSETTS FOR LEAVE TO INTERVENE

Massachusetts has moved for leave to intervene in this action, which was brought by the United States against California to settle the question of rights in the bed of the marginal sea off the coast of California.

Contrary to the better practice, *Chandler Co.* v. *Brandtjen, Inc.*, 296 U. S. 53, 56, the application of Massachusetts for intervention did not present a proposed answer. The nature of the claims which that state wishes to assert is, therefore, largely a matter of speculation. It is clear, however, that Massachusetts neither has nor claims any interest in the bed of the Pacific Ocean off the coast of California. Hence, Massachusetts cannot be affected by any judgment which may be entered in the suit. Accordingly, it is not entitled to intervene as of

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right. *Chandler Co.* v. *Brandtjen, Inc., supra;* cf. *Credits Commutation Co.* v. *United States,* 177 U. S. 311, 315–316; *Radford Iron Co.* v. *Appalachian Electric Power Co.,* 62 F. 2d 940, 942 (C. C. A. 4, 1933).

Moreover, as a matter of judicial discretion the motion should be denied. The only apparent interest of Massachusetts in the suit arises from the possibility that a decision favorable to the United States may constitute a precedent unfavorable to the claims of the state to the marginal sea off its own coasts. The state cannot, by the device of intervention, broaden the scope of the litigation between the original parties to include the coast of Massachusetts. *Chandler Co.* v. *Brandtjen, Inc., supra.* Since the state has no interest in the lands off the coast of California, intervention, if allowed, would permit Massachusetts only to contest issues of law. Its interests in that connection can be adequately protected by an appearance as *amicus curiae* without encumbering the record with pleadings, etc., incidental to intervention.

For these reasons, it is respectfully submitted that the motion should be denied.

J. HOWARD MCGRATH,
Solicitor General.

JANUARY 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1946

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OCTOBER TERM, 1945.

No. ~~12~~ 6, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA

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IN THE

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OCTOBER TERM, 1945.

No. 12, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA.

Comes now defendant, State of California, by its Attorney General, and, answering to the complaint herein, admits, denies and alleges as follows:

I.

Admits the allegations and each them contained in Paragraphs I, III and IV of the complaint. In this connection, defendant alleges as follows:

(1) The State of California (hereinafter sometimes referred to as "the State") is the owner in fee simple of all lands underlying all navigable waters within the boundaries of the State (subject to Legislative grants of portions thereof to the United States and to municipalities and counties, to leases, easements, and other rights granted by the State to various parties or condemned by plaintiff, and to grants by prior sovereigns confirmed by United

States patent, more particularly mentioned in the Second and Third Affirmative Defenses hereof). Fee title thereto vested in the State upon or prior to its admission into the Union as one of the United States of America by Act of Congress of September 9, 1850, admitting the State into the Union "on an equal footing with the original states, in all respects whatever," as expressly provided in said Act.

The original thirteen states (to wit, the States of Massachusetts, Rhode Island, New Hampshire, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina, and Georgia) own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands (except certain portions thereof expressly granted by said States, or by their predecessors, respectively, or condemned by plaintiff) under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays, harbors, rivers, and lakes.

The original thirteen states became vested with title to and ownership of all lands under all such navigable waters at a time prior to the creation or formation of plaintiff, United States of America.

None of the original thirteen states at any time or in any manner conveyed, granted, ceded, or surrendered title or ownership to their respective lands under such navigable waters to plaintiff, United States of America, except as to minor portions thereof specifically granted by State legislative authorization or condemned by plaintiff.

When the State of California was admitted into the Union as one of the United States of America "on an

equal footing with the original states in all respects whatever," it became vested (if it was not the owner thereof prior thereto) with the same ownership in fee simple of and title to all lands under all navigable waters within the boundaries of the State in like manner with the ownership and title of the original thirteen states to lands under such navigable waters within the boundaries of the respective original thirteen states.

The boundaries of the State as established by its Constitution of 1849 and approved by Act of Congress of September 9, 1850, in admitting the State into the Union, extend into the Pacific Ocean at least three English miles from and along the entire coast of California and include all islands, bays, and harbors along and adjacent to the California coast. Reference is hereby made to the allegations of the First Affirmative Defense hereof for further details of the matters alleged in this subparagraph (1) of this Paragraph I.

(2) Plaintiff, United States of America, each of its branches, and various of its departments and agencies, acting within the scope of their authority as prescribed by law, have at all times since the formation of the Union recognized, asserted, determined, and acquiesced in the ownership and title of the original thirteen states to all lands under all such navigable waters within the respective boundaries of said states. Plaintiff has likewise, through each of its branches, and various of its departments and agencies acting within the scope of their authority as prescribed by law, determined, recognized, asserted and acquiesced in the title of the State of California in and ownership of all lands under all navigable waters within the boundaries of the State at all times (with the sole exception mentioned in sub-paragraph 5 hereof), and has re-

quested and accepted from the State of California numerous grants, leases, easements and other interests in and to tide and submerged lands both under the coastal waters of California and under its bays, harbors, rivers and lakes, as in the Second Affirmative Defense hereof more particularly alleged.

(3) The State of California has acted in reliance upon the recognition by plaintiff of the State's ownership of and title to all lands under all navigable waters within the boundaries of the State, as aforesaid, at all times since the year 1850, in making various grants, leases, easements, franchises and licenses to numerous parties, and in assessing and taxing the rights and interests so granted, as in the Third Affirmative Defense hereof more particularly alleged.

(4) Plaintiff, United States of America, its judicial, executive and legislative branches, and various of its departments and agencies acting within the scope of their agency as prescribed by law, have, on numerous occasions ever since the year 1850, uniformly (with the sole exception referred to in sub-paragraph 5 hereof) treated all lands under navigable waters on the open coast of California below the line of mean low water as being owned by the State of California equally with the ownership by the State of all lands below the line of mean high tide of all navigable waters within the exterior boundaries of the State of California, whether situated on the open coast or within harbors, bays, lakes and rivers (except those conveyed by express grant, lease or license by the State or condemned by plaintiff, and except those lands lying below ordinary high water mark contained within the exterior

boundaries of United States patents confirming Mexican or Spanish grants to private individuals and municipalities).

The Federal Courts, the Department of the Interior and the Secretary thereof, the United States Attorney General, the War Department and the Navy Department, and various other departments and agencies of plaintiff, acting within the scope of their agency as prescribed by law, have on various occasions over a period of many years, ruled, decided, determined and asserted that the State of California is the owner of the lands underlying all navigable waters within its boundaries, whether such lands lie below the line of mean low water mark on the open coast or are located within bays, harbors, lakes and rivers. It has only been within the last few months that the present incumbent in the office of the Secretary of the Interior, and the Department of Justice of the United States, have asserted that there is any distinction between the ownership of lands on the open coast below mean low water mark, tidelands along the coast, and tide and submerged lands in navigable bays, harbors, rivers and lakes, despite the fact that plaintiff, all its branches and various of its departments and agencies have since 1850 ruled, determined, decided, recognized, asserted and acquiesced in the fact that there is no distinction whatever in the ownership of the State to all lands underlying navigable waters below the line of ordinary high water mark within the exterior boundaries of the State, including those along the coast. Reference is made to the allegations of the Fourth Affirmative Defense hereof for further details of the matters alleged in this subparagraph (4) of this Paragraph I.

(5) All issues raised by the complaint on file herein have been adjudicated against plaintiff and in favor of defendant in that judgment rendered in the action entitled *United States of America v. Mission Rock Company*, 189 U. S. 391, adjudging that the State of California became vested with title to all tide and submerged lands in the State of California and that the defendant in said action owned the submerged lands there in issue by a grant from the State of California. By reason of the unity and common basis of title of the State to all tide and submerged lands within its exterior boundaries, the question of title in and to all such lands located within the State has, by reason of said judgment, become and now is *res judicata* and *stare decisis* as between plaintiff, United States of America, and defendant, State of California, and its grantees and lessees; as more particularly alleged in the Fifth Affirmative Defense hereof.

II.

Answering Paragraph II of the complaint:

Alleges that defendant does not know and it cannot be determined therefrom what times are referred to in the phrase "all times herein material" or at what time it is alleged that plaintiff became "the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, * * *";

Alleges that defendant does not know and it cannot be determined therefrom whether plaintiff claims to be the owner in fee simple of said lands and properties, or claims merely to be possessed of "paramount rights in and powers over" them;

Alleges that defendant does not know and it cannot be determined therefrom what rights or what powers are referred to in the phrase "paramount rights in and powers over";

Alleges that defendant does not know and it cannot be determined therefrom what waters are referred to in the phrase "inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant by the phrase "extending seaward three nautical miles," as to whether it means three nautical miles seaward from "the ordinary low water mark," or three nautical miles "outside of the inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant or intended by the following phrase in paragraph II of said complaint:

> "the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles . . .";

Alleges that there are numerous bays, harbors and indentations on the coast line of California, among which are: San Diego Bay, Mission Bay, Laguna Bay, Newport Bay, Anaheim Bay, Alamitos Bay, San Pedro Bay, Long Beach Harbor, San Pedro Channel, Santa Monica Bay, Santa Barbara Channel, Hueneme Harbor, Point Mugu Bay, Santa Barbara Harbor, Morro Bay, Monterey Bay, Half Moon Bay, San Francisco Bay, Bodega Bay, Bolinas Bay, Drakes Bay and Humboldt Bay;

Alleges that defendant does not know and it cannot be determined therefrom how, in the case of each of said

bays, harbors and indentations, the line of ordinary low water mark can be ascertained or what is meant by said phrase, as applied to such bays, harbors and indentations, or from what line the area extending 3 nautical miles seaward therefrom would be measured;

Alleges that defendant does not know and it cannot be determined therefrom whether the lands under the aforesaid bays, harbors and indentations along the California coast are claimed by plaintiff in this action;

Alleges that defendant does not know and it cannot be determined therefrom with any reasonable degree of certainty or with any certainty whatever, what lands along the coast of California are claimed by plaintiff in this action;

Denies that plaintiff now is or ever has been the owner in fee simple of or the owner of any title to or interest in the lands or the minerals or other things of value underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California, or any part or portion thereof (except such portions thereof as have been acquired by plaintiff from defendant or its successors in interest by grant, cession, quitclaim, lease or condemnation);

Denies that plaintiff is possessed of any paramount rights in or powers over said lands or minerals or other things of value or any thereof, other than such governmental powers of regulation and control as it possesses with respect to other lands owned by defendant. Denies that such rights and powers, or any thereof, comprise or include any title to or interest in said lands or minerals or other things of value, or any thereof, except such as have been acquired from defendant or its successors in interest by grant, cession, quitclaim, lease, or condemnation.

III.

Answering Paragraph V of the complaint, defendant admits and alleges, that it has negotiated and executed leases on lands underlying the Pacific Ocean for the exploitation of the petroleum, gas and other mineral deposits, with numerous persons and corporations. Denies that the lessees to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean are too numerous to name or to make parties to this action. Denies that the lessees, or any of them, to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean have, or that any have, in violation of any asserted rights of the United States, entered upon the said lands, or any part thereof, or drilled wells for the recovery of petroleum or gas or other hydrocarbon substances, or any substances. In this connection defendant alleges that the United States has no right whatever to the petroleum or gas or other hydrocarbon substances, or any rights in connection with exploring for, drilling, removing, taking or using such substances from, in or under any of the lands underlying the Pacific Ocean within the boundaries of the State of California (other than such lands as it has acquired from defendant or its successors in interest by grant, cession, quitclaim, lease or condemnation). Admits and alleges that for a long time last past many of the wells drilled in the lands underlying the Pacific Ocean have been producing quantities of petroleum, gas and other hydrocarbon substances of value which the lessees of defendant have removed, taken, and used, paying defendant the royalties and other considerations as specified in each respective lease. Denies that such lessees have converted to their own use any of such petroleum, gas or other hydrocarbon substances. Admits that neither the State nor its lessees

have recognized any asserted right or any asserted title of the United States, nor have they paid to the United States either the value of any petroleum or other things of value taken from under lands lying under the Pacific Ocean or of any royalties thereon. In this connection defendant alleges that the United States has no right or interest whatever in or to the petroleum or other things of value taken from, in or under the lands under the Pacific Ocean within the boundaries of the State of California.

IV.

Answering Paragraph VI of the complaint, defendant admits and alleges that Pacific Western Oil Corporation is a corporation organized and existing under the laws of the State of Delaware and now occupies and claims, under Lease No. 92, as amended by Lease No. 92a, executed in the year 1929, an area of described tide and submerged lands near Elwood in Santa Barbara County, California.

Admits and alleges that the lands described in Paragraph VI of the complaint are a portion only of the lands leased by the State of California to Pacific Western Oil Corporation extending into the Pacific Ocean and Santa Barbara Channel thereof in the County of Santa Barbara by Lease No. 92, as amended by Lease No. 92a, as therein more particularly described.

Admits that Pacific Western Oil Corporation, under claim of right based on said Lease No. 92, as amended by Lease No. 92a, is now and ever since in or about the year 1929 has been in actual possession of and producing petroleum of value and in substantial quantities from under that portion of the lands described in said Leases situated below the line of mean low tide of the Pacific Ocean and Santa Barbara Channel thereof. Denies that Pacific

Western Oil Corporation is converting the petroleum to its own use. Admits and alleges in this connection that Pacific Western Oil Corporation is producing, extracting, taking and using the oil, gas and other hydrocarbon substances from wells drilled into the lands described in said Lease No. 92, as amended by Lease No. 92a, and is now and at all times material has been paying defendant State of California rents and royalties in accordance with the terms and provisions of said Leases. Upon information and belief, denies that the United States has made demand upon Pacific Western Oil Corporation for the surrender of possession of the lands described in said Lease No. 92, as amended by said Lease No. 92a, or has made demand that Pacific Western Oil Corporation discontinue the extraction or removal of petroleum or other minerals from said land; except that defendant admits and alleges that the United States, without any prior demand upon Pacific Western Oil Corporation as defendant is informed and believes and therefore alleges, on or about May 29, 1945 filed a complaint in the District Court of the United States for the Southern District of California, Central Division, entitled "United States of America, plaintiff v. Pacific Western Oil Corporation, a corporation, defendant," being Case No. 4493-B, Civil, seeking to recover possession of certain tide and submerged lands therein described, as there alleged to contain 144.07 acres more or less; which complaint, without further proceedings in said United States District Court other than the extension of time for said defendant to appear and plead, was, on motion of Plaintiff, United States of America, dismissed on October 19, 1945. Defendant is informed and believes and upon such information and belief alleges that no demand has been made upon Pacific Western Oil Corporation to

surrender possession of the lands attempted to be described in Paragraph VI of the complaint on file herein. Alleges that defendant State of California, by and through its lessee, Pacific Western Oil Corporation is in possession, and at all times since about the year 1929 has been in possession of the area of tide and submerged lands described in said Lease No. 92, as amended by said Lease No. 92a. Alleges that the tide and submerged lands described in said Lease No. 92, as amended by Lease No. 92a, lie under a part of the Santa Barbara Channel, and not in or under the open coast.

V.

Answering Paragraph VII of the complaint, defendant denies the allegations, and each of them, therein contained. Denies that the State of California has no title to or interest in the lands, or any of them, alleged to be in controversy. Denies that the State of California has only those governmental powers over the lands alleged to be in controversy which it has with respect to other lands of the United States within the territorial jurisdiction of the State.

VI.

Answering Paragraph VIII of the complaint, admits that the State of California has claimed to be, and alleges that the State of California has at all times since its admission into the Union on September 9, 1850 and prior thereto, been and is now the owner in fee simple of all lands below the line of ordinary high water mark under all navigable waters within the exterior boundaries of the State (subject to grants and leases by the State to other parties, subject to condemnations by and grants and cessions to plaintiff, and subject to grants of certain portions thereof made by Mexico and Spain and confirmed

by United States patents). Admits and alleges that at all times the State of California has asserted, claimed and announced its said ownership in fee simple of all such lands underlying navigable waters within the exterior boundaries of the State. Admits and alleges that the State of California will continue to claim such title for itself and will continue to exercise all the rights incident to such title. Denies that the State or its lessees or any other person acting under or pursuant to State authority at any time has trespassed or will trespass upon the lands alleged to be in controversy, or any part thereof. Denies that defendant or any of its lessees or anyone acting under authority of defendant State of California, in taking or using the minerals or other things of value from, in or under the lands alleged to be in controversy, will be in violation of any asserted rights of the United States, or that the United States will suffer irreparable, or any, injury, or that there is no adequate, or any, remedy, except by this action.

First Affirmative Defense.

The State of California (hereinafter sometimes referred to as "the State") is the owner in fee simple of all lands underlying all navigable waters within the boundaries of the State, (subject to Legislative grants to the several municipalities and counties, and to grants, leases, easements, and other rights granted by the State to various parties, or condemned by plaintiff, and to grants by prior sovereigns confirmed by United States patent, more particularly mentioned in the Second and Third Affirmative Defenses hereof). Title thus vested in the following manner:

1. Title thereto vested in the State upon or prior to its admission into the Union as one of the United States

of America by Act of Congress of September 9, 1850, admitting the State into the Union "on an equal footing with the original states in all respects whatever," as expressly provided in said Act.

2. The original thirteen states (to wit, the States of Massachusetts, Rhode Island, New Hampshire, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina and Georgia) own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands (except certain portions thereof expressly granted by such states, respectively or condemned by plaintiff) under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays, harbors, rivers and lakes.

3. The original thirteen states became vested with title to and ownership in fee simple of all lands under all such navigable waters at a time prior to the creation or formation of plaintiff, United States of America.

4. This Court has determined and declared, in previous decisions set forth hereinafter, that under the Common Law of England established prior to 1776, the Crown of England was the owner in fee simple of and held title to all lands under all navigable waters, as well under the sea out at least to the three-mile limit, as in bays, harbors, rivers and lakes.

5. The Crown of England, under English law, as declared and announced by this Court in its prior decisions, likewise was the owner in fee simple of and held the title to all such lands under such navigable waters of all English colonies, including the thirteen colonies in America lying on the Atlantic seaboard.

6. Certain of the original thirteen states, prior to statehood and when existing as English colonies, became vested with title to lands under such navigable waters by grant or charter from the Crown of England at various times between 1584 and 1732.

7. The title and ownership of the Crown of England in and to all such lands under such navigable waters, not theretofore granted to the respective colonies, vested in the respective colonies, as sovereign States, upon becoming free and independent States in the year 1776 as subsequently confirmed by the Treaty of Peace of 1783 between the King of England and the original thirteen states.

8. None of the original thirteen states at any time or in any manner conveyed, granted, ceded, or surrendered title or ownership of their respective lands under such navigable waters to plaintiff, United States of America (except as to minor portions thereof specifically granted by State legislative authorization or condemned by plaintiff).

9. When the State of California was admitted into the Union as one of the United States of America "on an equal footing with the original states, in all respects whatever," it became vested (if it was not theretofore the owner thereof) with the same title to and ownership in fee simple of all lands under all navigable waters within the boundaries of the State in like manner with the ownership and title of the original thirteen states to lands under such navigable waters within their respective boundaries.

10. The boundaries of the State as established by its Constitution of 1849 and approved by Act of Congress of September 9, 1850, in admitting the State into the Union, extend into the Pacific Ocean, at least three Eng-

lish miles from and along the coast of California and include all islands, bays and harbors along and adjacent to the California coast.

11. A compact and agreement was formed between plaintiff and defendant upon the admission of the State of California into the Union by Act of Congress of September 9, 1850. Said compact and agreement are forever binding upon plaintiff whereby all tide and submerged lands within the boundaries of the State, subject to the exceptions above noted, became vested in the State by reason of the previously adjudicated and well-recognized meaning of the phrase used in said Act of Admission, to wit, that the State was thereby admitted "upon an equal footing with the original states, in all respects whatever."

12. The details of the manner in which title to tide and submerged lands thus vested in the State of California, and of said compact and agreement to that effect, are set forth as follows:

I.

Defendant State of California was admitted into the Union as one of the United States of America by Act of Congress of September 9, 1850, on an equal footing with the original thirteen states in all respects whatever. Said Act of September 9, 1850 (9 U. S. Stats 452) is in words and figures as follows:

"AN ACT FOR THE ADMISSION OF THE STATE OF CALIFORNIA INTO THE UNION.

Whereas the people of California have presented a Constitution and asked admission to the Union, which constitution was submitted to Congress by the President of the United States by message, dated February thirteen, eighteen hundred and fifty, and

which, on due examination, is found to be republican in its form of government:

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the State of California shall be one, *and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States, in all respects whatever.**

Section 2. AND BE IT FURTHER ENACTED, That, until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

Section 3. AND BE IT FURTHER ENACTED, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor: PROVIDED, That nothing herein contained

*Italics added here and elsewhere in this Answer unless otherwise indicated.

shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

Approved September 9, 1850.

Millard Fillmore

Nowell Cobb

Speaker of the House of Representatives

William R. King

President of the Senate *pro tempore*."

II.

In connection with the enactment by Congress of said Act of Admission of the State of California, defendant State further alleges that:

1. The State of California was, on and prior to the thirteenth day of July, 1846, a Department embraced within the Republic of Mexico, exercising jurisdiction over the territory and people therein, with an existing civil and military government. Under the 1836 Constitution of the Republic of Mexico, the Republic was divided into 24 great departments, one of them constituting the "Department of the Californias," which included both Alta California (the present State of California), and Baja California. (2 Hittell, History of California, page 254.)

2. On May 13, 1846, the Congress of the United States of America declared war on the Republic of Mexico. On July 7, 1846, the naval forces of the United States seized Monterey, California, which was followed by the occupation of other ports; and concurrently therewith and following thereupon the armed forces of the United States seized and occupied the interior settlements within the territory of California. (*22 Bancroft's Works*, 230,

235, 238-407; *Mason, Constitutional History of California,* State Publication, p. 369.) Hostilities in California between forces of the Republic of Mexico and the United States ceased by the armistice effected through the Articles of Capitulation signed at Cahuenga, California, on January 16, 1847. (*22 Bancroft's Works,* pp. 404-407.) Peace was established between the Republic of Mexico and the United States of America by treaty signed on February 2, 1848, at Guadalupe Hidalgo, Mexico, with ratifications exchanged at Quaretaro, Mexico, on May 30, 1848, and proclaimed by the President of the United States on July 6, 1848.

Article IX of said Treaty of Guadalupe Hidalgo provided for the incorporation or admission of the State of California into the Union of the United States of America in words as follows:

> "The Mexicans, who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution: . . ."

By Article II of said Treaty of Guadalupe Hidalgo, it was provided that the political, administrative and judicial branches of the Government should be reestablished.

3. Military commanders of the United States of America, acting pursuant to authorization of the President of the United States, governed the territory and peoples of California from July 7, 1846, to December

20, 1849. (2 *Hittell, supra,* p. 786.) Said military commanders there displaced the civil governor of California holding office under the Government of the Republic of Mexico and the Department of the Californias, but local government as established under the Republic of Mexico was permitted to continue in control of certain of the local affairs both prior and subsequent to the proclamation of the treaty of peace of Guadalupe Hidalgo. (22 *Bancroft's Works,* pp. 606-614; *Mason, supra,* pp. 371-374.) At no time did the Congress of the United States establish California as a territory of the United States, nor did it establish any territorial or other form of civil government for California prior to September 9, 1850.

4. As a result of numerous local movements on the part of the people of California urging the organization of a State government, and as the result of Congress adjourning three consecutive sessions without providing for a civil government in California though the matter was before Congress on each of said three occasions, the military commander in California, on June 3, 1849, called a general election in California, to be held on August 1, 1849, for the election of delegates to a convention for the formation of a State constitution. (2 *Hittell, supra,* pp. 713-714.) That election was held, delegates were elected, and the convention met at Monterey, California, on September 1, 1849. Said convention formed a constitution for the State of California, providing for a State government, which included a bill of rights, suffrage, legislative, judicial and executive branches of government, defined the boundary of the State as hereinafter more particularly alleged, and provided for other matters of State government.

On October 11, 1849, the convention approved certain propositions to be tendered to the Congress of the United States as conditions of admission of the State into the Union, which propositions were tendered as an ordinance by way of articles of compact. These are the propositions referred to in the last proviso of the Act of Admission of September 9, 1850, quoted above. Said propositions provided for Congress to grant the State a section of land in every quarter-township of public lands for school purposes, to grant 72 sections of public lands for a university, to grant four sections for a seat of government, to grant 500,000 acres in addition to the same amount granted by Act of Congress of 1841 for defraying the expenses of State government and other public purposes, to allow 5% of the net proceeds of all sales of public land in the State for the encouragement of learning, to grant all the salt springs and land reserved for use of salt springs embracing at least one section, including such springs, to be disposed of as the Legislature might direct. (*J. Ross Browne, Debates of the California Convention,* pp. 467 *et seq.; 2 Hittell, supra,* p. 274; 23 *Bancroft's Works,* p. 300.)

The Schedule of said Constitution provided that immediately upon ratification by the people, the military governor of California was requested to cause a copy thereof to be forwarded to the President of the United States, in order that he might lay it before the Congress of the United States. Said schedule likewise required that the Senators and Representatives in Congress, elected by the people, be furnished with certified copies of the constitution, when ratified, which they were directed to lay before the Congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the Union.

Said Constitution was adopted by said convention on October 13, 1849. (*2 Hittell, supra,* pp. 756-774; J. Ross Browne, Debates of the Constitutional Convention, 1850.) Said Constitution was thereafter submitted to the electors of the State for adoption or rejection at an election held on November 13, 1849, throughout the State and was ratified by the electors at said election. (*Hittell, supra,* p. 784.) At the same general election, the people of the State of California elected a governor, lieutenant governor, members of the State legislature, two representatives-elect for the Congress of the United States, and two senators-elect for the Senate of the United States, if and when the State was admitted into the Union. (*Hittell, supra,* p. 784.)

5. In and by said Constitution, Article XII, Section 1, the boundaries of the State were fixed and determined as follows:

> "Sec. 1. The boundary of the State of California shall be as follows:
>
> Commencing at the point of intersection of forty-second degree of north latitude with the one hundred twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line, *to the Pacific Ocean, and extending therein three English*

miles; thence, running in a northwesterly direction and following the direction of the Pacific Coast, to the forty-second degree of north latitude; thence, on the line of said forty-second degree of north latitude, to the place of beginning. Also the islands, harbors, and bays along and adjacent to the coast."

6. Following the adoption of said Constitution, the first Legislature of the State of California met on December 15, 1849. At the first session of said Legislature, the governor and lieutenant-governor took office, the State government was established, and laws were enacted for the civil government of the people of the State. Said first session finally adjourned on April 22, 1850. (*Hittell, supra,* pp. 785-807.)

On April 13, 1850, at the said first session of the said Legislature, a law was enacted adopting the common law of England, so far as not repugnant to the Constitution of the United States or to the constitution or laws of the State of California, as the rule of decision in all the courts of the State. (*Hittell, supra,* p. 799.)

7. On December 20, 1849, Brigadier General Bennet Riley, United States Army, then United States Military Governor for California, resigned as such Governor. No military governor thereafter was appointed or thereafter held such office in the State of California. (2 *Hittell, supra,* p. 786.)

8. All proceedings aforesaid with respect to the *de facto* government of the State of California, the adoption of the Constitution by said State, the establishment of a civil government by the people of the State under said State constitution, and the legislative session aforesaid, were duly reported to the Secretary of War and the President of the United States, were approved and ratified by

the President, and by him reported to the Congress of the United States in his message to Congress on January 21, 1850. (XXI *Congressional Globe; 2 Hittell, supra,* pp. 811-813; ***House Executive Document No. 17, 31st Congress, First Session.***) On February 13, 1850, President Taylor by special message to Congress announced the presence of the Senators and Representatives elected to represent the people of the State of California in Congress, submitted the Constitution, propositions, and also a memorial requesting, in the name of the people of California, the admission of the State of California into the American Union. (*2 Hittell, supra,* p. 814.)

Congress debated the question of admitting California into the Union, and on September 7, 1850, said Act of Admission of the State, as hereinabove set forth in full, was enacted by the Congress and was duly approved by the President of the United States on September 9, 1850. (*23 Bancroft's Works,* pp. 336-345.)

In and by said Act of Admission, Congress ratified and approved said boundaries of the State of California as set forth in said Constitution, as aforesaid.

III.

In connection with the admission of the State of California into the Union "on an equal footing with the original states in all respects whatever," as provided in said Act of Congress of September 9, 1850, as set forth in Paragraph I hereof, defendant further alleges that:

The quoted phrase had a well-defined, judicially-determined and firmly-fixed meaning which had theretofore become a fixed rule of law, at the time Congress adopted said phrase in said Act of September 9, 1850,

admitting the State of California into the Union. Said firmly-established rule of law constituted a judicial determination that the State of California thereby became forever vested with title to and ownership in fee simple of all tide and submerged lands, and all lands under all navigable waters lying below the line of mean high water mark within the boundaries of said State, whether within bays, harbors, rivers or lakes, or on the open coast (with the exception of such thereof as had been granted to private individuals by a predecessor sovereign). A compact forever binding upon plaintiff was thereby established between plaintiff and defendant State with respect to defendant's title to and ownership of all such lands, obligating plaintiff to respect forever and to hold inviolable such title and ownership of defendant State.

IV.

The meaning and effect of the phrase "upon an equal footing with the original states in all respects whatever," which had thus crystalized and thus constituted said compact and agreement, was based upon the following principles:

1. This Court has determined and declared in previous decisions that under the Common Law of England established prior to 1776, the Crown of England owned all tide and submerged lands extending out at least to the three-mile limit adjoining his Colonies, as well as adjoining England.

2. The Crown made grants thereof to certain of the American Colonies prior to 1776.

3. The original thirteen states became owners thereof in 1776 or 1783, if not by earlier grant from the Crown.

4. Such tide and submerged lands were not granted to plaintiff upon its formation in 1789 either by the Constitution, or otherwise.

5. The original thirteen states have always retained ownership of such tide and submerged lands, except where specifically granted or condemned.

6. When California was admitted into the Union "upon an equal footing with the original states in all respects whatever," this phrase had an adjudicated meaning to the effect that all tide and submerged lands thereupon vested in the newly admitted State by reason of the fact that such type of lands were vested in the original states.

This meaning and effect of the phrase "on an equal footing with the original states in all respects whatever" developed, became fixed and certain, and constituted said compact and agreement in the following manner.

V.

The Crown of England, in his sovereign capacity, at common law, as declared and announced in previous decisions of this Honorable Court, held the title to and was the owner in fee simple of all tide and submerged lands, and all lands under navigable waters lying below mean high water mark, as well upon the open coast extending at least three miles seaward as within navigable rivers, bays, harbors and lakes.

> 1. "In this sea, the King of England hath a double right, viz. a right of jurisdiction which he ordinarily exerciseth by his admiral, *and a right of propriety or ownership.* The latter is that which I shall meddle with. The King's right of propriety or ownership in the sea and soil thereof is evidenced principally in these things that follow.

"1st. The right of fishing in this sea and the creeks and arms thereof is ordinarily lodged in the Crown, . . . but though the King is the owner of this great wast, and as a consequent of his propriety hath the primary right of fishing in the sea and the creekes and armes thereof; . . .

"IId. The next evidence of the King's right and propriety in the sea and the arms thereof is his right of propriety to the shore; and Maritime Increment. . . . .

"And thus much of the King's right of propriety which he hath in the sea, and also *prima facie* and in common presumption in the ports and creeks and armes of the sea." (Chief Justice Hale*, "De Jure Maris (Manuscript Circ. 1676), Hargraves Tracts (1787) pp. 10-17.)

2. "The soil of the seashore to the extent of three miles from the beach is vested in the Crown." (*The Company of Free Fishers and Dredgers of Whitstable v. Gann.* (House of Lords, 1865), 144 English Reports 1003).

3. "Clearly the bed of the sea, at any rate for some distance below the low-water mark, and the beds of tidal navigable rivers, are, *prima facie*, vested in the Crown. . . ." (*Lord Fitzhardinge v. Purcell* (1908), 99 Law Times 154, 164.)

4. "I see no reason to doubt that, by the law of Scotland, the solum underlying the waters of the

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*"The great authority in the law of England upon this subject [ownership of the sea] is Lord Chief Justice Hale, whose authorship of the treatise *De Jure Maris*, sometimes questioned, has been put beyond doubt by recent researches (Moore, on the Foreshore, 3d Ed. 318, 370, 413." Mr. Justice Gray, *Shively v. Boulby*, (1894) 152 U. S. 1, 11, who then proceeds to quote Chief Justice Hale, De Jure Maris, at length and follow him with approval on the law of England.

ocean, whether within the narrow seas, or from the coast outward to the three mile limit, and also the minerals beneath it, are vested in the Crown . . ." (*Lord Advocate v. Wemyss* (House of Lords, (1900) A. C. 48.)

5. "By that law [the common law], the title to the shore of the sea, and of the arms of the sea, and in the soils under tidewater is, in England, in the King. . . . ." (Mr. Justice Field, in *Weber v. Board of Harbor Commissioners* (1873), 85 U. S. 57, 65.)

6. "To the King of England is, therefore, not only assigned the sovereign dominion of the sea adjoining the coasts . . . but in him is also vested the right of property in the soil thereof." (*Angell, Right of Property in Tide Waters* (2d Ed. 1847), pp. 19-20.)

7. "By the common law, both the title and dominion of the sea, and of rivers and arms of the sea where the tide ebbs and flows and of all lands below the high water mark, within the jurisdiction of the Crown of England, are in the King. * * * (*Shively v. Bowlby* (1894), 152 U. S. 1, 11, 13.)

8. "In England, from the time of Lord Hale it has been treated as settled that the title to the soil of the sea, or of arms of the sea, below ordinary high water mark, is in the King, . . .

"The British Seas, sometimes called the Four Seas, are those which encompass the coasts of England, Scotland, and Ireland. To the west they not only include the sea between Great Britain and Ireland, but extend over the Atlantic Ocean, which washes the western coasts of Ireland: this western part of our sea is subdivided; for, so much as runs between England and Ireland is called St. George's Channel, or the Irish Sea; and the sea on the west coast of Scotland is sometimes named the Caledonian, Deucaledonian, or Scottish Sea, and sometimes the North Sea. To

the east we have the German Ocean, which is bounded principally by the opposite coasts of Germany, and the United Provinces (now Belgium); lastly, to the south there is the British Channel, or Sea, which runs along the French coast, and comprehending the Bay of Biscay, ends with the northern coast of Spain.

"Over the British seas, the King of England claims an absolute dominion and ownership, as Lord Paramount, against all the world. Whatever opinions foreign nations may entertain in regard to the validity of such claim, yet *the subjects of the King of England do, by the common law of the realm, acknowledge and declare it to be his ancient and indisputable right.*

"This dominion and ownership over the British seas, vested by our law in the King, is not confined to the mere usufruct of the water, and the maritime jurisdiction, but it includes the very fundum or soil at the bottom of the seas. 'The sea is the King's proper inheritance,' and he is 'Lord of the Great Waste,' both land and water; *'tam aquae quam soli.'* Selden, in his celebrated treatise on the Dominion of the Seas, would seem to contemplate this ownership of the King, as combining both jurisdiction and ownership; the one, indeed, would seem to involve the other, if Selden's doctrine to its full extent be admitted.

"There are eminent writers upon natural and upon national law, who have controverted Selden's doctrines, and have denied the King of England's exclusive dominion, and consequently his ownership over the British seas, but however this may be, and probably will ever continue, *vexata quaestio* between such writers, we know that the writers on the common and municipal law of England, as well as the decisions of our judicial courts, all speak the same lan-

guage, and appropriate the dominion of the British seas *tam aquae quam soli,* to the King.

"This dominion *not only extends over the open seas,* but also over all *creeks, arms of the sea, havens, ports,* and *tide-rivers,* as far as the reach of the tide, around the coasts of the kingdom. . . .

"Lord Hale, in the treatise ascribed to him, aptly compares the King's *property in the sea* and tide-rivers, creeks, etc., to the ownership of lords of manors in the common or waste lands of the manor.
* * *

"The title of the King of England to the land or soil *aqua maris cooperata,* is similar to his ancient title to all the *terra firma* in his dominions, as the first and original proprietor and lord paramount. It is a fundamental principle of our laws of property in land, that all the lands in the realm belonged originally to the King; and, according to the feudal principles of our ancient laws of tenure, the landowners of England are, to this day, *tenants* to the King, holding their lands of him, as their lord paramount.

"That part of the land which the King and his ancestors *have never granted out to the subject,* remains to the King, as his *demesnes,* in absolute ownership. The *terra firma* of England has become, almost entirely, the property (by grant and tenure) of the subject; but the *terra aqua maris cooperata* still remains to the King in wide and barren ownership.

"Some rare and antique instances may indeed be found of actual grants, by Kings of England, of certain portions of land *under the sea, i. e.* of both sea and land, to a certain extent. These grants have been made in such places where some creek or bay has afforded the means of exclusive possession. Thus, the tract ascribed to Lord Hale, and before quoted, recites a grant of King Canute *'de terra insulae* Thanet,

tam in terra quam in mari et littore;' and another of William the First, *'Abbati Sancti Augustini de tota terra Estanore, et totum littus usque medietatem aquae;'* and the author of the tract adds, *'If the King will grant lands adjacent to the sea, together 'with a thousand acres of land covered by the sea adjoining, such grant will pass the soil itself; and if there should be a recess of the sea, leaving such a quantity of dry land, it will belong to the grantee'.*

"Having stated the law to be that the king is absolute owner of the ground or soil under the surface of those seas which are within, or parcel of the British dominions;—let us proceed to distinguish the lines drawn by the law, between the *terra firma*, the *sea-bottom*, and the *sea-shore*." (HALL, "ESSAY ON THE RIGHTS OF THE CROWN IN THE SEA-SHORES OF THE REALM." (First published in 1830; 3 edition published, Moore, "History and Law of the Foreshore and Sea-shore" (1888) p. 667 *et seq.*)

9. In 1858 an arbitration proceeding was conducted to determine the respective property rights of the Queen of England and the Prince of Wales (who was also Duke of Cornwall) in minerals lying under the seashore of the Duchy of Cornwall between high and low-water marks and also below low-water mark. The arbitration involved the conditions upon which the grant of the duchy was made and the extent and effect of the grant. The decision of the arbitrator was confirmed and ratified by Parliament in "The Cornwall Submarine Mines Act, 1858" (21-22 Vict., Ch. 109) in which the decision was recited as follows:

"first, that the Right to all Mines and Minerals lying under the Seashore between High and Low Water Marks within the said County of Cornwall, and

> under Estuaries and tidal Rivers and other Places even below Low Water Mark, being in and Part of said County, is vested in His Royal Highness as Part of the Soil and territorial Possessions of the Duchy of Cornwall; secondly, that the Right to all Mines and Minerals lying below Low-water Mark under the open Sea, adjacent to but not being part of the County of Cornwall, is vested in Her Majesty the Queen in right of Her Crown * * *."

Said Act confirming and ratifying such decision provided that such mines and minerals lying below low-water mark under the open sea were vested in the Queen in right of Her Crown *"as part of the soil and territorial possessions of the Crown."*

10. During the early period of the Common Law, the Crown of England claimed and asserted title and ownership to the soil and bed of the sea extending far beyond the three-mile limit around Great Britain and the Colonies of the Crown. The title and ownership of the Crown of England to the bed and soil of the sea outside of and beyond the three-mile limit which prevailed under the earlier Common Law, was in the Eighteenth Century and later abandoned by the Crown of England and his title and ownership of such bed and soil was limited to the three-mile belt.

Cecil J. B. Hurst "Whose Is The Bed Of The Sea?" (1923) International Year Book, pages 7, 10, states in part that:

> "The wide claims to jurisdiction over the narrow seas which this country made in the past have fallen into desuetude. There has been no formal renunciation of them and it is merely by disuse that they have lapsed. If the rights of the Crown to the ownership

of the bed of the sea are now more restricted than they were at the time at which Lord Hale was writing, it can only be that they also have been narrowed by disuse.

* * * * * * * *

"To sum up: so far as Great Britain at any rate is concerned, the ownership of the bed of the sea within the three-mile limit is the survival of more extensive claims to the ownership of and sovereignty over the bed of the sea. The claims have become restricted by the silent abandonment of the more extended claims. * * *"

11. As an illustration of an early grant by a King of England of land under the sea, in 1658 the French port of Dunkirk passed to England, which thereafter claimed the ownership not only of the uplands but of the submerged lands in the Channel adjacent to Dunkirk. On October 27, 1662, Charles II sold to France, Dunkirk and its dependencies for the sum of 5,000,000 francs. This sale and transfer included the ownership of submerged lands in the Channel off the coast of France adjoining Dunkirk.

"The sale of Dunkirk and its dependencies *included submerged lands in tidal waters,* tideways, foreshores, uplands, quays, docks, canals, forts, guns, ammunition and the great cathedral." (MERSHON, "THE POWER OF THE CROWN IN THE VALLEY OF THE HUDSON" (1925), p. 13.)

VI.

The Crown of England, by the common law, was likewise the owner of all lands adjoining all English colonial territories (except where he had conveyed the same by charter or grant) under all navigable waters ex-

tending out at least three miles from the coast, as well as under all navigable bays, harbors, rivers and lakes.

"The point is geographically within even three miles of British territory; at that point islands have arisen from the sea. Are those islands no man's land? The answer is they are not; they belong in property to the British Crown." (*Secretary of State for India v. Chelikani Rama Rao* (1916), 43 L. R. Ind. App. 192, 199, 32 T. L. R. 652, P. C.)

"The bed and channel [of the Delaware River] remained in the British Crown, . . ." (*The Tinikum Fishing Co. v. Hartley* (1869), 61 Pa. 213.)

"During the time that Rhode Island was a colony of Great Britain, the fee to land within the colony below high water mark was in the Crown." (*Armour & Co. v. City of Newport* (R. I. 1920), 110 Atl. 645, 646.)

"According to the theory of the British constitution, all vacant lands are vested in the crown, as representing the nation, and the exclusive power to grant them is deemed to reside in the crown, as a branch of the royal prerogative. It has been held then, that this principle was as fully recognized in America as in the Island of Great Britain." (*Martin v. Waddell* (1842) 16 Pet. 367, 410.)

VII.

The Crown of England from time to time between the years 1584 and 1732 executed several grants to the several chartered colonies and colonial proprietors located along the Atlantic seaboard, of tide and submerged lands, as well as uplands, including submerged lands extending seaward of the coastline, as well as those underlying navigable bays, harbors, rivers and lakes. In this connection, defendant alleges that:

1. These grants have been recognized by this Honorable Court:

(a) "The various charters granted by different monarchs of the Stuart dynasty for large tracts of territory on the Atlantic coast conveyed to the grantees both the territory described and the powers of government, *including the property and the dominion of lands under tide water.*" (*Shively v. Bowlby* (1894), 152 U. S. 1, 14.)

"By those charters [from the King of England to the Duke of York] all 'dominion and propriety in the navigable waters, and in the soils under them, passed, as a part of the prerogative rights incident to the political powers conferred on the Duke';" (Shively v Bowlby, supra, p. 16).

". . . Rivers, bays, and arms of the sea, and all prerogative rights within the limitations of the charter undoubtedly passed to the Duke of York, and were intended to pass, except those saved in the letters-patent." (Martin v. Waddell (1842) 16 Pet. 367 at 411.)

(b) The colonial grants are to be interpreted in the light of the circumstance that the grant was for the purpose of enabling the grantee to establish a colony in the New World in which the grantee was to stand in the place of the King of England and administer government according to principles of the British constitution, as this Honorable Court determined in *Martin v. Waddell, supra* (page 412), saying that:

"Taking this rule for our guide, we can entertain no doubt as to the true construction of these letters-patent. The object in view appears upon the face of them. They were made for the purpose of encouraging the Duke of York to establish a colony

upon the newly discovered continent, to be governed, as nearly as circumstances would permit, according to the laws and usage of England; and in which the duke, his heirs and assigns were to stand in the place of the king, and administer government according to the principles of the British constitution. . . . The estate and rights of the king passed to the duke, in the same condition in which they had been held by the crown and upon the same trusts. Whatever was held by the king as a prerogative right, passed to the duke in the same character. And if the word 'soils' be a proper word to pass lands covered with navigable water, as contended for on the part of the defendant in error, it is associated in the letters-patent with 'other royalties' and conveyed as such . . . *And in the judgment of the court, the lands under navigable waters passed to the grantee as one of the royalties* incident to the powers of government, and were to be held by him, *in the same manner, and for the same purposes, that the navigable waters of England, and the soils under them, are held by the crown.*"

2. Some of these grants are the following:

(a) Elizabeth, Queen of England, on March 25, 1584, made a written grant to Sir Walter Raleigh of lands along the Atlantic coast, under which the first step of English colonization in America occurred, known as the North Carolina charter. The conveying clause of said grant reads (2 *Poore, Federal and State Constitutions of the United States* (1878), pp. 1379-1382), in part, as follows:

"And further that the said *Walter Ralegh,* his heires and assignes, and euery of them, shall haue, holde, occupie, and enioye to him, his heires and assignes, and euery of them for euer, all the soile of all such landes, territories, and Countreis, so to bee dis-

couered and possessed as aforesaide, and of all such Cities, castles, townes, villages, and places in the same, with the right, *royalties*[2], franchises, and jurisdictions, *as well marine as other within the saide landes,* or Countreis, *or the seas thereunto adioyning,* to be had, or used, with full power to dispose thereof, and of euery part in fee simple or otherwise, according to the order of the lawes of England, as neere as the same conueniently may bee, at his, and their will and pleasure, to any persons then being, or that shall remaine within the allegiance of us, our heires, and successors reseruing always to us our heires, and successors, for all seruices, duties, and demandes, the fift part of all the oare of golde and siluer, that from time to time, and at all times after such discouerie, subduing and possessing, shall be there gotten and obtained: All which landes, Countreis, and territories, shall for euer be holden of the said *Walter Ralegh,* his heires and assignes, of us, our heirs and successors, by homage, and by the said paiment of the said fift part, reserued onely for all services."

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[2]"Royalties" and "Prerogative rights" of the King of England included the dominion and propriety in the soils under all navigable waters. *Shively v. Bowlby* (1894), 152 U. S. 1, 16, states that:

> "By those [colonial] charters, in view of the principles stated by Lord Hale, . . . 'the dominion and propriety in the navigable waters and the soils under them, passed, as a part of the *prerogative rights* annexed to the political powers conferred on the Duke [of York in the grants to him of 1664 and 1674]; . . .' . . . the lands under the navigable waters pass to the grantee as one of the *royalties* incident to the powers of government; and were to be held by him in the same manner and for the same purposes that the navigable waters of England, and the soils under them, are held by the Crown."

Thus a grant specifically including "prerogative rights" or "royalties" necessarily granted the soil under the navigable waters within the boundaries of the grant.

Said grant was deemed to have lapsed some years after its issuance, as a result of unsuccessful attempts at colonization.

(b) On May 23, 1609, James I, King of England, executed the second charter grant of Virginia, incorporating the London Company under the title of "The Treasurer and Company of Adventurers and Planters of the City of London for the First Colony of Virginia," and thereby enlarged the territory granted under the earlier 1606 grant to the same parties so as to embrace the whole seacoast for 200 miles on each side of Old Point Comfort in Chesapeake Bay, extending from the Atlantic to the Pacific Oceans and also all the islands within 100 miles along the coast of both seas. (*Donaldson, The Public Domain* (1888), p. 32.) The conveying clause of said second grant (*2 Poore,* supra, p. 1900) reads in part:

> "And we do also of our special Grace, certain Knowledge, and mere Motion, give, grant, and confirm, unto the said Treasurer and Company, and their Successors, under the Reservations, Limitations, and Declarations hereafter expressed, all those Lands, Countries, and Territories, situate, lying, and being in that Part of America, called Virginia, from the Point of Land, called Cape or Point Comfort, *all along the Sea Coast* to the Northward, two hundred miles, and from the said Point of Cape Comfort, *all along the Sea Coast* to the Southward, two hundred Miles, and all that Space and Circuit of Land, lying from the Sea Coast of the Precinct aforesaid, *up into the Land throughout from Sea to Sea,* West and Northwest; And *also all the Islands lying within one hundred Miles along the Coast,* of both Seas of the Precinct aforesaid; Together with

all the *Soils,* Grounds, Havens, and Ports, Mines, as well Royal Mines of Gold and Silver, as other *Minerals,* Pearls, and precious Stones, Quarries, Woods, Rivers, Waters, Fishings, Commodities, Jurisdictions, *Royalties,* Privileges, Franchises, and Preheminences within the said Territories, and the Precincts thereof, *whatsoever and thereto, and thereabouts both by Sea and Land, being, or in any sort belonging or appertaining, and which We, by our Letters Patents, may or can grant, in as ample Manner and Sort,* as We, or any our noble Progenitors, have heretofore granted to any Company, Body Politic or Corporate, or to any Adventurer or Adventurers, Undertaker or Undertakers of any Discoveries, Plantations, or Traffic, of, in, or into any Foreign Parts whatsoever, and in as large and ample Manner, as if the same were herein particularly mentioned and expressed; * * *"

(c) On March 9, 1611, James I, King of England, executed a third charter of Virginia to the said Treasurer and Company, again enlarging the grant so as to annex to Virginia all the islands (Bermudas) within 300 leagues of the coast, lying between the thirtieth and forty-first degrees of North latitude. In the granting clause thereof (*2 Poore, supra,* p. 1903), said grant again conveyed the soils, lands, grounds, minerals, etc.,

"both within the said tract of land *upon the main, and also within the said islands and seas* adjoining whatsoever and thereunto or thereabouts, *both by sea and land* being situate."

The Virginia Company was dissolved after pecuniary losses in attempting to colonize America, and the three charters issued to the Virginia Company, as aforesaid, were vacated.

(d) On November 3, 1620, James I, King of England, granted a charter to The Plymouth Company, incorporated it as "The Council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England, in America," and granted territory lying on the Atlantic coast between the fortieth and the forty-eighth degrees of North latitude, extending from the Atlantic to the Pacific Oceans, and confirmed an earlier grant to the same group made in 1606. The granting clause reads (*Poore, supra,* pp. 922-926), in part, as follows:

> "* * * grant, ordaine and establish, that all that Circuit, Continent, Precincts, and Limitts in America, lying and being in Breadth from Fourty Degrees of Northerly Latitude, from the Equinoctiall Line, to Fourty-eight Degrees of the said Northerly Latitude, and in length by all the Breadth aforesaid throughout the Maine Land, from Sea to Sea, *with all the Seas,* Rivers, Islands, Creekes, Inletts, Ports, and Havens, within the Degrees, Precincts, and Limitts of the said Latitude and Longitude, shall be the Limitts, and Bounds, and Precincts of the second Collony: * * * all the aforesaid Lands and Grounds, Continent, Precinct, Place, Places and Territoryes, viz. that aforesaid Part of America, lying, and being in Breadth from *ffourty Degrees* of Northerly Latitude from the Equinoctiall Line, to *ffourty-eight* Degrees of the said Northerly Latitude inclusively, and in Length of, and within all the Breadth aforesaid, throughout all the Maine Lands *from Sea to Sea, together also, with the* Firme Lands, *Soyles,* Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, and *Mineralls,* as well Royall Mines of Gold and Silver, as other Mine and *Mineralls,* precious Stones, Quarries, and all, and singular other Com-

odities, Jurisdictions, *Royalties*, Priveliges, Franchises, and Preheminences, *both within the same Tract of Land upon the Maine, and also within the said Islands and Seas adjoining* * * * to have and to hold, possess and enjoy, all, and singular, the aforesaid Continent, Lands, Territoryes, *Islands*, Hereditaments and Precincts, *Sea, Waters*, Fishings, with all, and all Manner their Commodities, *Royalties*, Liberties, Preheminences, and Profitts, that shall arise from thence, with all and singular, their Appertenances, and every Part and Parcell thereof, and of them, to and unto the said Councell and their successors and Assignes for ever," * * *

(e) On March 4, 1629, Charles II, King of England, confirmed to Sir Henry Roswell and associates a prior grant of the Massachusetts territory lying between parallels three miles north of the Merrimac River and three miles south of the Charles River, extending westward to the Pacific Ocean, said grant being made to them by the Council of Plymouth in March, 1628. The granting clause thereof reads (*Poore, supra*, pp. 933-935,), in part, as follows:

"* * * and all Landes and Hereditaments whatsoever, lyeing within the lymmits aforesaide, North and South, in Latitude and Bredth, and in Length and Longitude, of and within all the Bredth aforesaide, throughout the mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea on the West Parte; and all Landes and Groundes, Place and Places, Soyles, Woodes, and Wood Groundes, Havens, Portes, Rivers, Waters, and Hereditaments whatsoever, lyeing within the said Boundes and Lymytts, and every Parte and Parcell thereof; and *also all Islandes* in America aforesaide, in the saide Seas, or either of

them, on the Westerne or Easterne Coates, or Partes of the saide Tracts of Landes hereby mencoed to be given and graunted, or any of them; and all Mynes *and Mynerals* whatsoever, in the said Landes and Premisses, or any parte thereof, and free Libertie of fishing in or within any the Rivers or Waters within the Boundes and Lymytts aforesaid, *and the Seas therevnto adjoining;* and all Fishes, Royal Fishes, Whales, Balan, Sturgions, and other Fishes of what Kinde or Nature soever, that shall at any time hereafter be taken in or within the saide Seas or Waters, or any of them, by the said Sir Henry Roswell * * * their Heires and Assignes, or by any other person or persons whatsoever there inhabiting, by them, or any of them, to be appointed to fishe therein. * * *

"TO HAVE and hould, possesse and enjoy the said partes of New England in America, which lye, extend, and are abutted as aforesaide, and every parte and parcell thereof; *and all the Islands,* Rivers, Portes, Havens, *Waters,* Fishings, Fishes, Mynes, Myneralls, Jurisdiccons, Franchises, *Royalties,* Liberties, Priviledges, Comodities, and Premisses whatsoever, with the Appurtenances, vnto the said Sir Henry Rosewell * * * their Heires and Assignes forever, * * *"

The foregoing charter of Massachusetts and the grant to Roswell and associates was vacated on June 18, 1684, and thereafter, on October 7, 1691, William and Mary, King and Queen of England, granted a new charter consolidating five colonies under the name of Massachusetts Bay. The grant covered the tract of land extending three miles north of the Merrimac River on the north and the Rhode Island colony on the south, the granting

clause of which reads (*Poore, supra,* p. 947), in part, as follows:

> "* * * And all Lands Grounds Places Soiles Woods and Wood grounds Havens Ports Rivers *Waters* and other Hereditaments and premisses whatsoever lying within the said bounds and limitts aforesaid and every part and parcell thereof and *alsoe all Islands and Isletts lying within tenn Leagues* directly opposite to the Main Land within the said bounds and *all Mines and Mineralls* as well Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parte thereof TO HAVE and to hold the said Territories Tracts Countreys Lands Hereditaments and all and singular other the premisses with their and every of their Appurtenances to Our said Subjects and Inhabitants of Our said Province of the Massachusetts Bay in New England and their Successors * * *"

(f) On April 3, 1639, Charles I, King of England, confirmed to Sir Ferdinando Georges a grant of Maine, which had been previously granted to Sir Ferdinando Georges by the Council of Plymouth in 1622, 1629 and 1631. The granting clause of the 1639 confirmatory grant reads (*Poore, supra,* p. 775), in part, as follows:

> "* * * with all and singuler the Soyle and Grounds thereof *as well drye as covered with water* and all *waters Portes Havens and Creekes of the Sea* and *Inletts of the said Province* of Mayne and Premisses as to them or any of them belonginge *or adjacent* as alsoe all Woodes Trees Lakes and Rivers within the said Provynce of Mayne and Premisses and the Lymitts of the same togeather with the Fisheing of

whatsoever kinde as well Pearle as Fishe as Whales Sturgeons or any other either *in the Sea* or Rivers and alsoe All *Royaltyes* of Hawkeing Hunting Fowleing Warren and Chases within the said Province of Mayne and Premisses aforesaid Deere of all sorts and all other Beasts and Fowles of Warren and Chase and all other Beasts there and alsoe All Mynes and Oare of Goulde Silver Precious Stones Tynne Leade Copper Sulphure Brimstone or any other mettall or Mynerall matter whatsoever within the said Province and Premisses or any of them opened or hidden in all Quarries there And all Gould Silver Pearle Precious Stones and Ambergreece whiche shallbee founde within the said Province and Premisses or any of them and the *Lymitts and Coasts of the same* or any of them or any parte of them or any of them and all and singular other Proffitts Benefitts and Commodityes groweing comeing accrueing or happening or to be had perceived or taken *within the said Province and Premisses Lymitts and Coasts* of the same or any of them * * * * togeather *alsoe with all and singuler and as large and ample Rights Jurisdiccons Priviledges Prerogatives Royalties* Libertyes Imunityes Franchises Preheminences and Hereiditaments *as well by the Sea as by Lande* within the said Province and Premisses and the Precincts and Coasts of the same or any of them *and within the Seas belonging or adjacent to them* or any of them as the Bishopp of Durham within the Bishopricke or Countie Palatine of Duresme in our Kingdome of England now hath useth or enjoyeth or of right hee ought to have use or enjoye within the said Countie Palatine as if the same were herein particularly menconed and expressed * * *".

This territory was claimed by Massachusetts Bay colony under the prior grant from the Council of Plymouth to Sir Henry Roswell and associates above mentioned; and in the year 1667 the grandson of Sir Ferdinando Georges deeded the province of Maine by mesne conveyances to the Governor and Company of Massachussetts Bay, thus validating the claim of Massachusetts, which claim was thereafter recognized by the 1691 charter of William and Mary to Massachusetts Bay above mentioned.

(g) In connection with the aforesaid grant of the province of Maine, a grant of the same province of Maine was, on March 12, 1664, made by Charles II, King of England, to his brother, the Duke of York, the latter thereafter becoming King of England as James II, and, upon accession to the throne, merged said grant in the Crown. The granting clause thereof, however, reads (*Poore, supra,* p. 783,), in part, as follows:

> "* * * together with all ye lands *islands soyles* rivers harbours mines *minerals* quarryes woods marshes water lake fishings hawking hunting and fowling and all other *royaltyes* proffitts commodityes and hereditaments to the said *several islands* lands and premisses belonging and appertaining with theire and every of theire appurtenances *and all our estate right rule interest benefit advantage claims and demand of in or to the said lands and premises or any part or parcell thereof* and the revercon and revercons remainder and remainders together with the yearly and other ye rents revenues and profitts of all and singular the said premisses and of every part and parcell thereof to have and to hold *all and singular the said lands islands* hereditaments and premisses with their and every of their appurtenances hereby given and granted or hereinbefore menconed to be

> given and granted unto our dearest brother James Duke of Yorke his heires and assignes forever * * *"

This grant to the Duke of York by Charles II was confirmed by a second grant of Maine to the Duke of York by Charles II, King of England, on June 29, 1674, the granting clause being substantially identical to the first grant above set forth (*Poore, supra,* p. 786).

(h) On April 22, 1635, Charles I, King of England, confirmed to Captain John Mason the grant of New Hampshire made to him by The Plymouth Company on November 7, 1629. The identure of November 7, 1629, to Captain John Mason, as aforesaid, recited the grant to The Plymouth Company of New England, situated between the fortieth and forty-eighth degrees of North latitude, and then particularly recited (*Poore, supra,* p. 1271), as follows:

> "together with *the seas* and islands lying within 100 miles of any part of said coast of the countries aforesaid and *also all the said soil* * * * mines and *minerals* * * * within any of the said territories and the precincts thereof whatsoever."

The granting clause of the November 7, 1629, grant to Captain John Mason, as aforesaid, after describing the New Hampshire territory conveyed, then provided (*Poore, supra,* p. 1271), in part, as follows:

> "* * * together *with all Islands and Islets* within Five League Distance of the Premisses, and abutting upon the same or any Part or Parcel thereof; as also all *Lands, Soyles,* Grounds, Havens, Ports, Rivers, Mines, *Minerals,* Pearls, Precious Stones, Woods, Quarries, Marshes, *Waters,* Fishings, Huntings, Hawkings, Fowling and *other Commodities and Hereditaments whatsoever,* with all and singular

their Appurtenances; together with *all Prerogatives,* Rights, *Royalties,* Jurisdictions, Privileges, Franchises, Liberties, Preheminances, Marine Power, *in and upon the said Seas and Rivers;* as also all Escheats and Casualties thereof, as Flotsam, Jetson, Lagan, with Anchorage, and other such Duties, Immunities, Scotts Islets, and Appurtenances whatsoever, with all of the Estate, Right, Title, Interest, Claim, and Demand whatsoever which the said President and Council, and their successors, of Right ought to have or claim in or to the said Portions of Lands, Rivers, and other the Premisses as is aforesaid, by Reason of Force of his Highness's said Letters-pattents, in as free, large, ample, and beneficial Manner, to all Intents, Constructions, and Purposes whatsoever, as in and by the said Letters-patents the same are amongst other Things granted to the said President and Council aforesaid, except two-fifths of the Oar of Gold and Silver in these Presents hereafter expressed; * * *"

In said confirmatory grant from Charles I to Captain John Mason, dated April 22, 1635, the granting clause reads (*Poore, supra,* p. 1273), in part, as follows:

"* * * togeather with all and singular Havens, Harbors, Cricks, and Yslands inbayed, and *all Islands and Isletts lying within five leagues distance of the Mayne Land* opposite and abbutting upon the Premises or any part thereof, not formerly lawfully granted to any by spetiall name; *and all mines, mineralls,* quaries, *soyles,* and woods, marshes, *waters,* rivers, lakes, fishing, hawkings, hunting, and fowling, and all other *Royaltys,* jurisdictions, priviledges, preheminences, profitts, commoditys, and haereditaments whatsoever, with all and singular theire and every of theire appurtenances, * * *"

By commission of September 18, 1680, Charles II, King of England, appointed a president and council and a general assembly existing at the pleasure of the King to govern the province of New Hampshire, but in said commission Charles II expressly recognized the grant of New Hampshire to John Mason, as aforesaid, and these grants remained in full force and effect down to and beyond the date of the Revolution in the year 1776. (*Poore, supra,* p. 1278.)

(i) On April 23, 1662, Charles II, King of England, issued a charter incorporating "The Company and Society of Our Colony in Connecticut in America," and granted the Connecticut province to said Company, with the granting clause reading (1 *Poore, supra,* pp. 256, 257), in part, as follows:

> "* * * with the Islands thereunto adjoining, together with all firm Lands, Soils, Grounds, Havens, Ports, Rivers, Waters, Fishings, Mines, Minerals, precious Stones, Quarries and all and singular other Commodities, Jurisdictions, Royalties, Privileges, Franchises, Preheminences, and Hereditaments whatsoever, within the said Tract, Bounds, Lands, and Islands aforesaid, or to them or any of them belonging. * * *"

The Connecticut constitution of 1776 continued said charter and grant of April 23, 1662, in full force and effect as the organic law of the State of Connecticut, by providing (1 *Poore, supra,* pp. 257, 258), in part, as follows:

> "The People of this State, being by the Providence of God, free and independent, have the sole and exclusive Right of governing themselves as a free, sovereign, and independent State; and having from their Ancestors derived a free and excellent Constitu-

tion of Government whereby the Legislature depends on the free and annual Election of the People, * * * Be it enacted and declared by the Governor, and Council, and House of Representatives, in General Court assembled, That the ancient Form of Civil Government, contained in the Charter from Charles the Second, King of England, and adopted by the People of this State, shall be and remain the Civil Constitution of this State, under the sole authority of the People thereof, independent of any King or Prince whatever. And that this Republic is, and shall forever be and remain a free, sovereign and independent State, by the Name of the STATE OF CONNECTICUT."

(j) On March 12, 1664, Charles II, King of England, granted to his brother, James, Duke of York, the New York area, with the granting clause reading (1*Poore, supra,* pp. 783-784), in part, as follows:

"* * * and also all that Island or Islands commonly called by the severall name or names of Matowacks or Long Island scituate lying and being towards the west of Cape Codd and ye narrow higansetts abutting upon the maineland between the two Rivers there called or knowne by the severall names of Conecticutt and Hudsons River together also with the said river called Hudsons River and all the land from the west side of Conecticutt to ye east side of Delaware Bay and also *all those severall Islands* called or knowne by the names of Martin's Vinyard and Nantukes otherwise Nantuckett *together with all ye lands islands soyles* rivers harbours mines *minerals* quarryes woods marshes *waters* lakes ffishings hawking hunting and ffowling *and all other royalltyes* proffitts commodityes *and hereditaments* to the said *severall islands lands* and premisses belonging and appertaining *with theire and every of theire appurte-*

nances and all our estate right title interest benefitt advantage claime and demand of in or to the said lands and premises or any part or parcell thereof."

In order to perfect the title of the Duke of York to said area after the Duke of York had taken possession of this area from the Dutch by force of arms in 1667 and its recapture by the Dutch and subsequent return to the Duke of York, a second grant was made on June 29, 1674, by Charles II, King of England, to his brother, the Duke of York, with the granting clause reading substantially as contained in the first grant as aforesaid. (2 *Poore, supra,* p. 1328, footnote; *Donaldson, The Public Domain, supra,* p. 43; 1 *Poore, supra,* p. 786.) In February, 1685, James, Duke of York, succeeded his brother, Charles II, as King of England, and thereby the preceding grants to the Duke of York, as aforesaid, became merged into the Crown, with New York thereafter and until 1776 being governed as a Crown colony or plantation province by a series of Royal Governors. (*Donaldson, The Public Domain, supra,* p. 43.)

(k) On June 20, 1632, Charles I, King of England, issued a proprietary charter and grant to Lord Baltimore, who then became proprietor of the province of Maryland, the territory covered by the grant lying between the fortieth degree of latitude on the north and the Potomac River on the south, with an eastward projection of the southern boundary across the peninsula flanking the Chesapeake Bay to the Atlantic coast. (*Donaldson, The Public Domain, supra,* p. 49.) The grant, the original of which was written in the Latin, provides (1*Poore, supra,* pp. 811-812), in part, as follows:

". . . *omnes et singulas Insulas et Insululas* ab Orientali Praedictae Regionis Littore Orientem ver-

sus in Mari Natas vel nascendas *infra decem Leucas marinas ab eodem Littore* scituatas cum omnibus et sigulis Portubus Navium Stationibus Aestuariis Fluminibus et Fretus *ad Regionem vel Insulas praedictas pertinentibus Omnesque Fundos* Terrae Campestria Sylvas Montana Paludes Lacus Flumina Aestuaria et Freta infra Metas Terminos et Limites praedictos scituata seu existentia, cum cujuscunque Generis Piscium tam Balaenarum Sturgeonum *et aliorum Regalium* quam aliorum in Mari Simubus Fretis vel Fluminibus infra Premissa Piscationibus et Piscibus ibidem captis Omnesque insuper Auri Argenti Gemmarum et Lapidum pretiosorum et alias quascunque sive Lapidum sive Metallorum sive alterius cujuscunque Rei aut Materiae Venas Mineras det Fodinas tam apertas quam occultas *infra Regionem Insulas* seu Limites praedictos repertas et reperiendas."

In the 1776 Maryland constitution, Article II, the State of Maryland declared (1 *Poore, supra,* p. 817), in part, that:

"* * * and the inhabitants of Maryland are also entitled to all property, derived to them, from or under the Charter granted by his Majesty Charles I to Caecilius Calvert, Baron of Baltimore."

(1) On March 24, 1663, Charles II, King of England, made a grant to the Earl of Clarendon of the Province of Carolina, out of which the states of North Carolina and South Carolina were later formed. The lands granted were between the thirty-first and thirty-sixth degrees of north latitude, with the granting clause thereof reading (2 *Poore, supra,* p. 1383), in part, as follows:

"* * * together with all and singular ports, harbours, bays, rivers, *isles* and islets belonging to the country aforesaid; and also *all the soil, lands,* fields,

woods, mountains, fields, lakes, rivers, bays and islets, scituate or being within the bounds or limits aforesaid, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the sea, bays, islets and rivers within the premises, and the fish therein taken; and moreover all veins, mines, quarries, as well discovered as not discovered, of gold, silver, gems, precious stones, and all other whatsoever, be it of stones, metals, or any other thing whatsoever, found or to be found *within the countries, isles and limits aforesaid.*"

It being later discovered that the colonies of Clarendon and Albemarle were beyond the lands granted in said Charter of 1663, upon petition of the proprietors, Charles II, on June 30, 1665, issued a supplemental grant or charter to the Earl of Clarendon and others, with the granting clause thereof reading (2 *Poore, supra,* p. 1390), in part, as follows:

"* * *. And also, all the soils, lands, fields, woods, mountains, ferms, lakes, rivers, bays and islets, situate or being within the bounds or limits last before mentioned; with the fishings of all sorts of fish, whales, sturgeons, and all other royal fish, in the sea, bays, islets and rivers, within the premises, and the fish therein taken, *together with the royalty of the sea upon the coast within the limits aforesaid;* and moreover all veins, mines and quarries, as well discovered as not discovered, of gold, silver, gems and precious stones, metal, or any other thing, found, or to be found, within the province, territory, islets and limits aforesaid: * * * together with all and singular the like and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and franchises of what kind soever, within the territory, isles, islets and limits aforesaid; * * *"

The 1776 constitution of North Carolina, Article XXV, contains a declaration on the part of said State of its ownership of the property in the land and in the seas to be in the people of the State of North Carolina and reads (*2 Poore, supra,* p. 1410), in part, as follows:

"XXV. The property of the soil, in a free government, being one of the essential rights of the collective body of the people, it is necessary, in order to avoid future disputes, that the limits of the State should be ascertained with precision; and as the former temporary line between North and South Carolina, was confirmed, and extended by Commissioners, appointed by the Legislatures of the two States, agreeable to the order of the late King George II. in Council, that line, and that only, should be esteemed the southern boundary of this State—that is to say, * * *.

Therefore all the territory, *seas,* waters, and harbours, with their appurtenances, lying between the line above described, and the southern line of the State of Virginia, which begins on the sea shore, in thirty-six degrees thirty minutes, north latitude, and from thence runs west, agreeable to the said Charter of King Charles, are the right and property of the people of this State, to be held by them in sovereignty; * * *."

(m) On June 9, 1732, George II, King of England, issued to James Ogelthorpe and others a corporate charter creating the Province of Georgia and making a grant thereof, with the granting clause reading (1 *Poore, supra,* p. 373; 2 *Thorpe, Federal and State Constitutions* (1909), pp. 765 *et seq.*), in part, as follows:

"* * * and all that share, circuit and precinct of land, within the said boundaries, *with the islands*

on the sea, lying opposite to the eastern coast of the said lands, within twenty leagues of the same, which are not inhabited already, or settled by any authority derived from the crown of Great-Britain: *together with all the soils,* grounds, havens, ports, gulfs and bays, mines, as well royal mines of gold and silver, *as other minerals,* precious stones, quarries, woods, rivers, waters, fishings, as well royal fishings of whale and sturgeon as other fishings, pearls, commodities, jurisdictions, *royalties,* franchises, privileges and pre-eminences within the said frontiers and precincts thereof and thereunto, in any sort belonging or appertaining, *and which we by our letters patent may or can grant, and in as ample manner and sort as we may or any of our royal progenitors have hitherto granted* to any company, body politic or corporate, or to any adventurer or adventurers, undertake or undertakers, of any discoveries, plantations or traffic, of, in, or unto any foreign parts whatosever; *and in as legal and ample manner, as if the same were herein particularly mentioned and expressed*: * * *"

VIII.

Upon the American Revolution, all the rights of the Crown of England and of its Parliament (not theretofore granted to the several colonies) vested in the several States, and each of the original thirteen states thereby became the owner of the soil under all navigable waters within its boundaries, including the submerged lands situated within at least three miles of its coast.

1. "For when the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to *all their navigable waters, and the soils under them,* for their own common use, subject only to the rights since surren-

dered by the Constitution to the general government." (*Martin v. Waddell* (1842), 16 Peters 367, 410; *Pollard's Lessee v. Hagan* (1845), 3 Howard 212, 229.)

2. "And upon the American Revolution, all the rights of the Crown and of Parliament vested in the several states, subject to the rights surrendered to the national government by the Constitution of the United States." (*Shively v. Bowlby* (1894), 152 U. S. 1, 15-16; *M'Ilvaine v. Coxe's Lessee* (1805), 4 Cr. (8 U. S.) 209, 210.)

3. "When the Revolution took place, the people of each State became themselves sovereign, and in that character hold the absolute right to all their navigable waters and the soils under them, subject only to the rights since surrendered by the Constitution. Martin v. Waddell, 16 Pet. 410." (*Mumford v. Wardwell* (1867), 6 Wall. 423, 436.)

IX.

In the treaty of peace between the King of England and the thirteen original States, upon the termination of the American Revolution, the King expressly relinquished to the respective thirteen States, individually, all his right and title in the lands of the several States.

1. In the "Preliminary Articles of Peace" between the King of England and the original thirteen States, dated November 30, 1782, Article I thereof reads, in part, as follows:

"His Brittanic Majesty acknowledges the said United States, viz.: New Hampshire, Massachusetts Bay, Rhode-Island & Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina and

Georgia, to be free, sovereign and independent States; that he treats with them as such: . . ."

Article 2 (d) describes the boundaries and contains the phrase:

". . . comprehending all Islands within twenty leagues of any part of the Shores of the United States, . . ."

Article 5 thereof reads, in part, as follows:

"It is agreed that the Congress shall earnestly recommend it to the legislatures of the respective States, to provide for the Restitution of all Estates, Rights and Properties, which have been confiscated belonging to the real British Subjects." (2 *Miller, Treaties and Other International Acts of the United States,* p. 96.)

2. In the Definitive Treaty of Peace between the King of England and the original thirteen States, dated September 3, 1783, Articles 1st and 2d declare, in part, that:

"Article 1st

"His Brittanic Majesty acknowledges the sd. *United States, viz. New-Hampshire, Massachusetts Bay,* Rhode-Island & Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina & Georgia, *to be free sovereign & Independent States;* that he treats with them as such, and for himself his Heirs & Successors, relinquishes all Claims to the *Government Propriety* & Territorial Rights of the same & every Part thereof.

"Article 2d.

"* * * East, by a Line to be drawn along the Middle of the River St. Croix, from its Mouth in

the Bay of Fundy to its Source; and from its Source directly North to the aforesaid Highlands, which divide the Rivers that fall into the Atlantic Ocean, from those which fall into the River St. Lawrence; comprehending all Islands within twenty Leagues of any Part of the Shores of the United States, & lying between Lines to be drawn due East from the Points where the aforesaid Boundaries betwen Nova Scotia on the one Part and East Florida on the other, shall respectively touch the Bay of Fundy and the Atlantic Ocean, excepting such Islands as now are or heretofore have been within the Limits of the said Province of Nova Scotia."

(Definitive Treaty of Peace, signed at Paris September 3, 1783. Ratified by the United States January 14, 1784. Ratified by Great Britain April 9, 1784. Ratifications exchanged at Paris May 12, 1784. Proclaimed January 14, 1784. 2 *Miller, Treaties and Other International Acts of the United States of America,* pp. 152-153.)

3. The Treaty of Peace, December 24, 1814, between His Britannic Majesty and the "United States of America," after the formation of plaintiff United States of America in 1789, makes no reference to any of the individual states. (*2 Miller, supra,* p. 574.)

X.

The soils under all navigable waters within the respective thirteen States were reserved to those States and were not granted by the Constitution to the United States of America upon its formation in 1789.

1. "The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states re-

spectively." (*Pollard's Lessee v. Hagan* (1845), 3 How. 212, 229.)

2. "Settled rule of law in this court is, that the shores of navigable waters and the soils under the same in the original States were not granted, by the Constitution, to the United States, but were reserved to the several States; . . ." (*Mumford v. Wardwell* (1867), 61 Wallace 423, 436.)

3. "The soils under tidewaters within the original States were reserved to them respectively, . . ." (*Borax Consolidated Ltd. v. Los Angeles* (1935), 296 U. S. 10, 15.)

XI.

The new States admitted into the Union since its formation in 1789 have the same rights, sovereignty and jurisdiction over the navigable waters and soils under them within the respective boundaries of the new States as the original States possess within their respective borders.

1. "The new states have the same rights, sovereignty, and jurisdiction over this subject as the original states. (*i.e.*) The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the states respectively." (*Pollard's Lessee v. Hagan* (1845), 3 How. 212, 229.)

2. ". . . the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf [to the navigable waters and soils under them] as the original States possess within their respective borders." (*Mumford v. Wardwell, supra,* p. 436.)

3. "The soils under tidewaters within the original States were reserved to them respectively, and the

States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands *within their borders* as the original States possessed." (*Borax Consolidated Ltd. v. Los Angeles* (1935), 296 U. S. 10, 15.

XII.

The phrase "on an equal footing with the original thirteen States in all respects whatever," contained in the Act of Admission of the State of California of September 9, 1850, quoted above, originated in the legislation pursuant to which deeds of cession of the so-called "western territory" of the original thirteen States were executed and delivered to plaintiff, United States of America. Likewise the only portion of the uplands, tidelands or submerged lands of the original thirteen States to which plaintiff United States of America has at any time succeeded as owner thereof (which it held in trust for the future States as to all tide and submerged lands), is this so-called "western territory" of certain of the original thirteen States conveyed to plaintiff by special Acts of the legislatures of certain of the original thirteen States, followed by formal instruments of cession of particular areas thereof; or by condemnation proceedings. In this connection defendant alleges that:

1. The Congress of the Confederation of the original thirteen States, acting pursuant to the Articles of Confederation of 1777, and in order to resolve the issue which had theretofore prevented the State of Maryland from ratifying said Articles of Confederation, on September 6, 1780, adopted a Resolution requesting the several States owning territories under their respective colonial grants northwest of the Ohio River, to cede to the Con-

gress their respective territory in the so-called "western" country. Said Resolution contained, in part, the following recital and resolution:

> ". . . that the act is expressly calculated to accelerate the Federal Alliance, by removing, as far as depends on that State [of Maryland] the impediment arising from the western country, and for that purpose to build up a portion of territorial claim for the general benefit; whereupon, resolved . . . that it be earnestly recommended to those States, who have claims to the western country, to pass such laws, and give their delegates in Congress such powers as may effectually remove the only obstacle to a final ratification of the Articles of Confederation; . . ."

On October 10, 1780, the Congress of said Confederation adopted a Resolution committing Congress to dispose of any lands so ceded by the several States to Congress under the resolution of September 6, 1780, for the formation of new states which shall have the same rights of sovereignty, freedom and independence as the original States. Said resolution reads, in part, as follows:

> "Resolved, That the unappropriated lands that may be ceded or relinquished to the United States, by any particular State, pursuant to the recommendation of Congress of the 6th day of September last, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, which shall become members of the Federal Union, *and have the same rights of sovereignty, freedom, and independence, as the other States:* . . ." (*Donaldson, The Public Domain* (1884), *supra,* p. 64.)

2. On March 1, 1781, the State of New York, pursuant to said Resolutions of Congress of the Confedera-

tion of 1780, as aforesaid, by and through her delegates in the Continental Congress, executed and delivered a deed to the Congress, pursuant to an Act of the Legislature of the State of New York of September 12, 1780, thereby ceding title, ownership and jurisdiction over the western part of the then State of New York, more particularly described in said deed, to and for the use and benefit of such of the States as were then or thereafter became parties to the Articles of Confederation.

On October 29, 1782, Congress, on behalf of the Confederation, accepted said cession from the State of New York. (*Donaldson, The Public Domain, supra,* pp. 65-67.)

3. On January 2, 1781, the State of Virginia, by an Act of her Legislature or General Assembly, submitted a proposition for the cession to the Congress of the Confederation of the western lands of the State of Virginia.

By an Act of September 13, 1783, the Congress of the Confederation agreed to receive and accept said western lands.

The State of Virginia, by an Act of her Legislature of October 20, 1783, authorized the delegates of the State of Virginia in the Congress of the Confederation to consummate said transfer by execution and delivery of a formal instrument. On March 1, 1784, the State of Virginia, through her delegates in the Continental Congress, executed and delivered a formal instrument ceding to the Congress of the Confederation for the benefit of the future states, all her right and title to the territory within the limits of the colonial charter of Virginia above-mentioned, lying to the northwest of the Ohio River. (*Donaldson, The Public Domain, supra,* pp. 67-69.)

4. The Congress of the Confederation on April 23, 1784, adopted a Resolution for the government of the territory northwest of the Ohio River thus ceded to the Congress and the Confederation by the States of New York and Virginia, as aforesaid. Said Resolution provided for the formation of new states out of portions of the territory lying northwest of the Ohio River thus ceded, which new states were to be admitted into the Congress of the United States on *"an equal footing with the original states."* Said Resolution in this connection reads, in part, as follows:

> "That whensoever any of the said States shall have, of free inhabitants, as many as shall then be in any one the least numerous of the thirteen original States, such State shall be admitted by its delegates into the Congress of the United States, *on an equal footing with the said original States;* . . ." (*Donaldson, The Public Domain, supra,* pp. 148, 149.)

5. On November 13, 1784, the General Court of Massachusetts authorized her delegates in the Congress of the Confederation to execute a cession to the Congress and Confederation of all the western rights of the State of Massachusetts. On April 19, 1785, the State of Massachusetts, by its delegates in Congress, executed and delivered to the Congress and the Confederation a deed of cession conveying ownership and jurisdiction within the territory of the limits of the colonial charter of Massachusetts, as aforesaid, lying westerly of a line more particularly described in said deed.

On April 19, 1785, the Congress and the Confederation adopted a Resolution accepting said deed of cession from the State of Massachusetts. (*Donaldson, The Public Domain, supra,* pp. 71-72.)

6. Like cessions were made (i) by the State of Connecticut to the Congress and the Confederation on September 13, 1786, by formal act of its Legislature and by formal deed of cession which was duly accepted by the Congress and the Confederation on September 14, 1786, of all the western lands of the State of Connecticut; and (ii) by the State of South Carolina on August 9, 1787, executing and delivering to the Congress and the Confederation a deed of cession conveying its western territory more particularly described in said deed, which cession was duly accepted by said Congress on August 9, 1787. (*Donaldson, The Public Domain, supra,* pp. 72-76.)

7. On July 13, 1787, the Congress of the Confederation adopted an Ordinance entitled "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio." Said Ordinance provided for the establishment of civil government in the territories thus ceded to the Congress and the Confederation by the several States aforesaid. By said Ordinance, "Articles of Compact" between the original States and the peoples of said territory, declared to remain forever unalterable, unless by common consent, provided for the establishment of new States to be formed out of portions of said territory thus ceded by said States.

Certain of the conditions thus established by said Ordinance for the formation of new States in the Northwest Territory have been fairly uniformly incorporated in and made a part of the Acts of Admission of each of the several States newly admitted into the Union since the formation thereof, including the Act of Admission of the State of California, as hereinafter more particularly alleged. One of such conditions is that each State thus admitted shall

be admitted on *"an equal footing with the original States in all respects whatever."* Said Ordinance reads, in this connection, as follows:

> "Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, *on an equal footing with the original States, in all respects whatever;* and shall have the liberty to form a permanent constitution and State government: . . ."

Other conditions contained in said Ordinance likewise employed in Acts of Admission of newly formed States, including the State of California, provided that the legislatures of the new States shall never interfere with the "primary disposal of the soil" by the United States in Congress assembled; that no tax shall be imposed by said new States on lands the property of the United States; and that the navigable waters shall be common highways and forever free from any tax, impost or duty. (*Donaldson, The Public Domain, supra,* pp. 153-156.]

8. After the formation of plaintiff, United States of America, under the Constitution of 1789, plaintiff succeeded to the ownership of the Congress and the Confederation in and to the "western lands" ceded to the Congress and Confederation, as aforesaid, by the States of New York, Virginia, Massachusetts, Connecticut and South Carolina

9. The first session of the Congress of the United States of America, immediately after the formation thereof under the 1789 Constitution, enacted a statute approved August 7, 1789 reciting that:

> "Whereas, in order that the ordinance of the United States in Congress assembled, for the govern-

ment of the territory northwest of the River Ohio, may continue to have full effect, it is requisite that certain provisions should be made so as to adopt the same to the present Constitution of the United States:"

And thereupon legislated with respect to said Ordinance for the Northwest Territory as to communications between the governors of the territories and the President of the United States, and like matters. (2 *Thorpe, Federal and State Constitutions* (1909), p. 963.)

10. Thereafter, the State of North Carolina executed and delivered to plaintiff, United States of America, on February 25, 1790, a deed of cession of its western territory, being the territory now constituting the present State of Tennessee, which deed of cession was pursuant to an Act of the Assembly of the State of North Carolina, adopted December 22, 1789. (*Donaldson, The Public Domain, supra,* pp. 76-78.)

11. Likewise, the State of Georgia, on April 24, 1802, ceded to plaintiff, United States of America, pursuant to an Act of the Legislature of the State of Georgia, the entire territory west of the present western boundary of the State of Georgia and east of the Mississippi River. (*Donaldson, The Public Domain,* pp. 79-81.)

XIII.

The Acts of Congress enabling territories to form constitutions and state governments, and admitting the newly-formed States into the Union, prior to the Act of Admission of the State of California, contained provisions substantially identical with the provisions contained in the Act of Admission of the State of California, aforesaid. These provisions were substantially the same as those conditions

specified in the Ordinance of 1787 to govern the Northwest Territory, as aforesaid. These same provisions were contained in the Enabling Acts and Acts of Admission of the newly-formed states, whether formed out of the Northwest Territory ceded to the Congress and the Confederation and plaintiff, as aforesaid, or formed out of territory purchased by plaintiff, United States of America, as in the case of the 1803 Louisiana Purchase from France or derived under the Treaty of Gaudalupe Hidalgo of 1848, as aforesaid. In this connection defendant alleges:

1. The State of Tennessee was admitted into the Union by Act of Congress approved June 1, 1796, providing that said State "is hereby declared to be one of the United States of America, *on an equal footing with the original states in all respects whatever,* by the name and title of the State of Tennessee." (6 *Thorpe, supra,* p. 3414.)

2. The State of Ohio was formed and admitted into the Union under Enabling Act of Congress approved April 30, 1802, which provided that said State when formed *"shall be admitted into the Union upon the same footing with the original states in all respects whatever."* (5 *Thorpe, supra,* p. 2897.)

3. The State of Louisiana on April 8, 1812 (3 *Thorpe, supra,* p. 1378), the State of Indiana on December 11, 1816 (2 *Thorpe, supra,* p. 1057), the State of Mississippi on December 10, 1817 (4 *Thorpe, supra,* p. 2032), the State of Illinois on December 3, 1818 (2 *Thorpe, supra,* p. 972), the State of Alabama on December 14, 1819 (1 *Thorpe, supra,* p. 195), the State of Maine on March 3, 1820 (3 *Thorpe, supra,* p. 1645), the State of Missouri on March 2, 1821 (4 *Thorpe, supra,* p. 2148).

the State of Arkansas on June 15, 1836 (1 *Thorpe, supra,* p. 264), the State of Michigan on January 26, 1837 (4 *Thorpe, supra,* p. 1930), the State of Florida on March 3, 1845 (2 *Thorpe, supra,* p. 662), the State of Iowa on March 3, 1845 (2 *Thorpe, supra,* p. 662), were each admitted to the Union by Act or Resolution of the Congress of the United States, each such Act or Resolution using verbatim the language that each such state *"shall be admitted into the Union on an equal footing with the original states, in all respects whatever."*

4. The State of Texas was admitted into the Union by Resolution of Congress approved March 1, 1845, which provided in part that Texas

> "shall be admitted into the Union, by virtue of this Act, on an equal footing with the existing States, as soon as the terms and conditions of such admission and the cession of remaining Texas territory to the United States shall be agreed upon by the governments of Texas and the United States." (6 *Thorpe, supra,* p. 3545.)

XIV.

In this connection, defendant particularly alleges that the Resolution of Congress for the admission of the State of Alabama, approved December 14, 1819, as aforesaid, by which said State "was admitted into the Union on an equal footing with the original States, in all respects whatever," also made particular reference to the Enabling Act of Congress of March 2, 1819, for the people of Alabama to form a constitution and State government. Said Enabling Act of Congress of March 2, 1819, provided, in part, that:

> (i) "all navigable waters within the said State shall forever remain public highways, free to the citi-

zens of said State and of the United States, without any tax, duty, impost, or toll, therefor, imposed by the said State"

and

(ii) "that they [the People of Alabama] forever disclaim any right and title to the waste or *unappropriated lands* lying within the said Territory; and that the same shall be and remain at the sole and entire disposition of the United States; . . ." (1 *Thorpe, supra,* p. 94.)

1. The foregoing phrases in the Alabama Enabling Act are substantially identical with the like phrases contained in the Act of Admission of the State of California of September 9, 1850, above quoted, namely: (i) that the State is admitted into the Union "on an equal footing with the original States in all respects whatever"; (ii) that the State "shall never interfere with the primary disposal of the public lands within its limits and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned," and (iii) that "all the navigable waters within said State shall be common highways and forever free."

2. These quoted phrases from the Alabama Act of Admission had been adjudicated prior to 1850 by this Honorable Court in its decision relating to the Enabling Act of the State of Alabama, being identical or substantially identical with the same phrases contained in the Act of Admission of the State of California as aforesaid. In this connection, defendant alleges that:

(i) In the year 1842, this Honorable Court determined, in the case of *Martin v. Waddell,* 16 Peters 366, 410, that each of the original thirteen States,

upon the Revolution, themselves became sovereign and in that character hold the absolute right to all their navigable waters and the soils under them, succeeding, at said time or earlier, to the title thereto formerly owned by the Crown of England; and adjudicated that the State of New Jersey, one of the thirteen original States, was the owner of the land there in question lying beneath the navigable waters of Raritan Bay and Raritan River.

(ii) In the year 1845, approximately five years prior to the compact entered into between plaintiff and defendant State of California, in the Act of Admission of the State of September 9, 1850, this Honorable Court determined and adjudicated, in *Pollard's Lessee v. Hagan,* 3 Howard 212, 229, that the State of Alabama, pursuant to the Act of Admission of Congress admitting said State into the Union "on an equal footing with the original States in all respects whatever," thereby became owner of all navigable waters, and the soils under them, within the boundaries of that State, which ownership this Honorable Court there held was essential in order that the State of Alabama be on an equal footing with the original thirteen States in all respects whatever, under the compact between the State of Alabama and plaintiff, United States of America, formed by the Act of Admission of said State, and in accordance with the principle theretofore adjudicated by this Honorable Court in *Martin v. Waddell, supra.*

(iii) This Honorable Court likewise adjudicated, in the year 1845, in its decision of *Pollard's Lessee v. Hagan, supra,* that the condition in the Act of

Admission of the State of Alabama, hereinabove set forth, that:

> "all navigable waters within the said State shall forever remain public highways free to the citizens of said State, and of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State"

was not intended by Congress and was not understood to mean, and did not mean, that said State of Alabama did not become the owner of all lands under all navigable waters within its boundaries. This Honorable Court there adjudicated the meaning of said quoted phrase to be that the Congress would simply continue to have its power to control commerce among the several states, as provided in Article I, Section 8, of the United States Constitution.

(iv) This Honorable Court likewise adjudicated in *Pollard's Lessee v. Hagan, supra,* that the provision in the Act of Admission of the State of Alabama, hereinbefore quoted, whereby the People of Alabama disclaim title to the "waste or unappropriated lands" within said State and agree that such lands "shall be and remain at the sole and entire disposition of the United States," was not intended by Congress and was not understood by plaintiff and Alabama to mean, and did not mean, that lands underlying the navigable waters of said State were thereby to remain at the sole disposition of the United States or that the State of Alabama disclaimed title to such lands underlying navigable waters. This Honorable Court there held that said phrase referred solely to the "public lands," and authorized the establishment

of rules and regulations respecting the sales and disposition of such public lands, but that the term "public lands" did not thereby include the lands in question, to-wit, the lands underlying the navigable waters within the boundaries of the State of Alabama.

(v) In *Pollard's Lessee v. Hagan, supra,* an Act of the Congress of the United States of July 2, 1836, was involved, whereby Congress attempted to grant, approximately 17 years after the admission of the State of Alabama into the Union, to one William Pollard, submerged lands situated within Mobile Bay in the State of Alabama, and pursuant to which Act of Congress a patent was issued to William Pollard. This Honorable Court there held said patent null and void, and the Act of Congress and the patent issued pursuant thereto ineffective to convey title to tide and submerged lands within the State of Alabama, as this Honorable Court there said (13 *Howard,* 229) that:

> "Then to Alabama belong the navigable waters, and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States."

and this Court concluded its opinion in that case by stating the principle of property law ever since recognized and enforced throughout all the States of the Union (p. 229), as follows:

> "By the preceding course of reasoning, we have arrived at these general conclusions: First, The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Secondly, The new States have the

same rights, sovereignty, and jurisdiction over this subject as the original States. Thirdly, The right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case."

XV.

Congress had before it in the year 1850 when it was debating the proposed admission of the State of California into the Union, the Acts of Admission by which the States formed out of the "western lands" ceded to the United States, as aforesaid, were admitted to the Union; the Ordinance of 1787; the language of the Act of Admission of Alabama; and had knowledge of the decision of the United States Supreme Court in *Pollard's Lessee v. Hagan, supra,* and in *Martin v. Waddell, supra.*

With full knowledge thereof, and with the purpose, understanding and intention of admitting the State of California into the Union on an equal footing in all respects whatever with the original States, and with the States admitted into the Union prior to California, the Congress framed the Act of Admission of the State of California in substantially the same terms as those contained in the Act of December 14, 1819, for the admission of the State of Alabama, in order to vest in the State of California all the right, title and sovereignty previously granted to the State of Alabama and theretofore adjudicated and determined by this Honorable Court to have vested in the State of Alabama, including the ownership of all lands under all navigable waters within the boundaries of said State; and in order that the State

of California would have all the right, title and sovereignty of each of the original thirteen States.

XVI.

Subsequent decisions of this Honorable Court have confirmed and approved the meaning and intent of the Congress in the Act of Admission of the State of California on September 1850, as to the phrases "on an equal footing," "primary disposal of the public lands," and "navigable waters to remain public highways," as aforesaid. This Honorable Court has determined on numerous occasions that the State of California became the owner of lands under all navigable waters *within its boundaries* upon its admission into the Union as a result of the Congress admitting it on an equal footing with the original states; and that the reservation to the United States of the right to make "primary disposal of all public lands" did not affect the State's ownership of and title to all such lands under all such navigable waters. In this connection defendant alleges:

1. In the year 1867 this Honorable Court in *Mumford v. Wardwell,* 6 Wall. 423, 436 determined that:

> "California was admitted into the Union September 9, 1850, and the Act of Congress admitting her declares she is so admitted on an equal footing, in all respects, with the original States. (9 Stat. at L. 452.) Settled rule of law in this court is that the shores of navigable waters and the soils under the same in the original States were not granted by the Constitution, to the United States, but were reserved to the several States."

2. In the year 1873 this Honorable Court in *Weber v. Board of Harbor Commissioners,* 85 U. S. 57, 65, determined that:

> "Although title to the soil under the tide waters of the Bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon an equal footing with the original States, absolute property in and dominion and sovereignty *over all soils under the tide waters within her limits* passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, . . ."
>
> Citing *Pollard's Lessee v. Hagan,* 3 How. 212, and *Mumford v. Wardell,* 6 Wall. 436.

3. In the year 1891 this Honorable Court in *San Francisco v. LeRoy,* 138 U. S. 656, 670, determined that:

> "As to tide-lands, although it may be stated as a general principle — and it was so held in *Weber v. Board of Harbor Commissioners,* 18 Wall. 57, 65, — that the titles acquired by the United States to lands in California under tide-waters, from Mexico, were held in trust for the future State, so that their ownership and right of disposition passed to it upon its admission into the Union, . . ."

4. In the year 1891 this Honorable Court, in *Knight v. U. S. Land Association,* 142 U. S. 161, 183, determined that:

> "It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the several States, and that

the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess *within their respective borders. Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229; *Goodtitle v. Kibbe,* 9 How. 471, 478; *Mumford v. Wardwell,* 6 Wall. 423, 436; *Weber v. Harbor Commissioners,* 18 Wall. 57, 65. Upon the acquisition of the territory from Mexico the United States acquired the title to tide lands equally with the title to upland; but with respect to the former they held it only trust for the future States that might be erected out of such territory."

5. In the year 1903, this Honorable Court, in *United States v. Mission Rock Company,* 189 U. S. 391, 404, determined that:

"The title and dominion which a State acquires to lands under tidewaters by virtue of her sovereignty received elaborate consideration, exposition and illustration in the case of *Shively v. Bowlby,* 152 U. S. 1, 58. Prior cases are there collected and quoted, among others, *Weber v. Commissioners,* 18 Wall. 57, 65. From the latter as follows (and the case concerned tide lands in California): 'Although the title to the soil under the tidewaters of the bay was acquired by the United States by cession from Mexico, equally with the title to the upland, they held it only in trust for the future State. Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters *within her limits* passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper, * * *"

6. In 1921, the United States of America itself contended before this Honorable Court that the State of California acquired title to submerged lands, in the case of *United States of America v. Coronado Beach Company,* 255 U. S. 472, 487-488, where Mr. Justice Holmes stated that:

> "The jurisdiction of the decree and the validity of the patent, so far as they cover the tidelands, is denied by the United States, *a special reason being found in the fact that California became a state in 1850, and thereby acquired a title to the submerged lands before the date of the decree.* But the title of the state was subject to prior Mexican grants."

7. In 1935, this Honorable Court, in *Borax Consolidated, Ltd., v. Los Angeles,* 296 U. S. 10, 15, determined that:

> "The controversy is limited by settled principles governing the title to tidelands. The soils under the tidewaters within the original States were reserved to them respectively, and the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands *within their borders* as the original States possessed. *Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229, 230; *Goodtitle v. Kibbe,* 9 How. 471, 478; *Weber v. Harbor Commissioners,* 18 Wall. 57, 65, 66; *Shively v. Bowlby,* 152 U. S. 1, 15, 26. This doctrine applies to tidelands in California. *Weber v. Harbor Commissioners, supra; Shively v. Bowlby, supra,* pp. 29, 30; *United States v. Mission Rock Co.,* 189 U. S. 391, 404, 405. Upon the acquisition of the territory from Mexico, the United States acquired the title to tidelands equally with the title to upland, but held the former only in trust for

the future States that might be erected out of that territory. *Knight v. United States Land Assn.,* 142 U. S. 161, 183. There is the established qualification that this principle is not applicable to lands which had previously been granted by Mexico to other parties or subjected to trusts which required a different disposition,—a limitation resulting from the duty resting upon the United States under the treaty of Guadalupe Hidalgo (9 Stat. 922), and also under principles of international law, to protect all rights of property which had emanated from the Mexican Government prior to the treaty. *San Francisco v. Le Roy,* 138 U. S. 656, 671; *Knight v. United States Land Assn., supra; Shively v. Bowlby, supra.* That limitation is not applicable here, as it is not contended that Mormon Island was included in any earlier grant. See *DeGuyer v. Banning,* 167 U. S. 723.

"It follows that if the land in question was tideland, the title passed to California at the time of her admission to the Union in 1850. That the Federal Government had no power to convey tidelands, which had thus vested in a State, was early determined. *Pollard v. Hagan, supra; Goodtitle v. Kibbe, supra.* In those cases, involving tidelands in Alabama, the plaintiffs claimed title under an inchoate Spanish grant of 1809, an Act of Congress confirming that title, passed July 2, 1836, and a patent from the United States, dated March 15, 1837. The Court held that the lands, found to be tidelands, had passed to Alabama at the time of her admission to the Union in 1819, that the Spanish grant had been ineffective, and that the confirming Act of Congress and the patent conveyed no title. The Court said that 'The right of the United States to the public lands, and the power of Congress to make all need-

ful rules for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy.' *Pollard v. Hagan, supra.* See also *Shively v. Bowlby, supra,* at pp. 27, 28; *Mobile Transportation Co. v. Mobile,* 187 U. S. 479, 490; *Donnelly v. United States,* 228 U. S. 243, 260-261."

8. In the year 1938, this Honorable Court, in *United States v. O'Donnell,* 303 U. S. 501, 519, stated that:

> "After pointing out that the State of California retained title to tide land below high water mark, and that the United States could not enjoy the use of Mare Island as a naval depot while its shores belonged to the state, he concluded with the recommendation that 'California be invited to relinquish to the United States whatever claim, if any, she may have to the shores or the overflowed land of Mare Island.'"

XVII.

A rule of property law, upon which thousands of titles to property are predicated, has been firmly established in this State as a result of the long line of decisions of this Honorable Court following and applying the principle announced in *Martin v. Waddell, supra,* and *Pollard's Lessee v. Hagan, supra.* As this Honorable Court stated in the year 1903, in *United States v. Mission Rock Company, supra* (189 U. S., at page 406):

> "The decisions cover a period of many years and have become a rule of property and the foundation of many titles."

The foregoing decisions of this Honorable Court have been followed in many decisions of the lower Federal courts and of the State courts.

1. An example of the uniform acceptance of and adherence to the foregoing accepted rule of property law is the following:

The identical property sought to be described in Paragraph VI of the complaint herein (State Tide and Submerged Land Lease No. 92 as amended by Lease No. 92(a)), extending into the Pacific Ocean and Santa Barbara Channel thereof, approximately three-quarters of a mile, and the adjoining submerged lands (State Tide and Submerged Land Lease No. 93), have been the subject of adjudications by the Federal Courts, which have applied and followed the accepted rule of property law resulting from the decisions of this Honorable Court set forth in the preceding paragraphs thereof. These were the companion decisions of the United States District Court for the Southern District of California, *Spalding v. United States,* 17 Fed. Supp. 957, affirmed by the Ninth Circuit Court of Appeals, 97 Fed. (2d) 697, cert. den. by this Honorable Court, 305 U. S. 644, and *Spalding v. United States,* 17 Fed. Supp. 966, appealed to the Circuit Court of Appeals in 97 Fed. (2d) 701. These companion decisions followed and relied upon the earlier decision of the Ninth Circuit Court of Appeals, *Bankline Oil Company v. Commissioner,* 90 Fed. (2d) 899, appealed to this Court, 303 U. S. 362, involving State Tide and Submerged Land Lease No. 89 in the Elwood Oil Field, which Lease No. 89 extends approximately three-quarters of a mile into the Pacific Ocean and Santa Barbara Channel thereof, lying several hundred feet southerly of said Leases 92 and 93. The Circuit Court of Appeals stated in the latter case (90 Fed. (2d) 900) that:

"The State of California holds the tide lands within its boundaries in its sovereign capacity in trust

'for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein free from interference of private parties'. *Boone v. Kingsbury,* 206 U. S. 148, 183, 273 P. 797, 812. See *Constitution of California,* Article 15; *Illinois Central Railroad Company v. Illinois,* 146 U. S. 387; *Borax Consolidated v. Los Angeles,* 296 U. S. 10; *Heckman v. Swett,* 99 Cal. 303, 33 P. 1099; *Oakland v. Buteau,* 219 Cal. 745, 29 P. (2d) 177. The petitioner's lease was granted pursuant to the Statutes of California, 1921, c. 303, p. 404, entitled, 'An act to reserve all minerals in state lands,' etc. By this act, the state has reserved the mineral deposits in all lands belonging to the state. . . .

* * * * * * * *

"One of the purposes of the aforesaid act . . . is to give to the citizens of the state of California 'an opportunity to intercept the large volumes of oil gravitating seaward to inextricable depths, and to reduce to useful purposes oil, gas and mineral *deposits reposing beneath the ocean's bed.*' Boone v. Kingsbury, 206 Cal. 148, 181, 273 P. 797, 811, *supra.* It was enacted in pursuance of the policy of the state of California 'with respect to the extraction of its minerals *from state lands.*' Boone v. Kingsbury, 206 Cal. 148, at page 185, 273 P. 797, 813, *supra.* The legislation was upheld by the California Supreme Court against the claim that it violated the implied trust under which the state holds its tide lands because the rights granted by the leases do not interfere with such trust, . . .' Boone v. Kingsbury, 206 Cal. 148, at page 183, 273 P. 797, 813, *supra.*"

The United States District Court in *Spalding v. United States,* in ruling on said State Tide and Submerged Land

Leases Nos. 92 and 93, stated (17 Fed. Supp. 957, at 960):

> "The tidelands of California are held by the state in trust for the people for the purpose of navigation, commerce, and fishery. Constitution of California, art. 15, §2; Borax Consolidated v. Los Angeles (1935) 296 U. S. 10, 56 S. Ct. 23, 80 L. Ed. 9; Illinois Central Railroad Co. v. Illinois (1892) 146 U. S. 387, 452, 13 S. Ct. 110, 36 L. Ed. 1018; Forestier v. Johnson (1912) 164 Cal. 24, 127 P. 156; City of Oakland v. Buteau (1934) 219 Cal. 745, 29 P. (2d) 177; Boone v. Kingsbury (1928) 206 Cal. 148, 273 P. 797.
>
> "While the state is prohibited from alienating the tidelands (Constitution of California, art. 15, §3), general leasing statutes allowing their leasing exist. Act 6345, 2 Deering's General Laws of California (1931) p. 3468; Act 6351, 2 Deering's General Laws (1931) p. 3473; Act 8418, Deering's General Laws (1931) p. 4700. The control of some of the State's tidelands has also been transferred from the State to several of its largest cities and counties, through legislative enactments. * * *"

Substantially all the lands under consideration in said *Bankline* and *Spalding* cases were lands below low water mark off the coast of California and said lands extended approximately three-quarters of a mile into the Pacific Ocean and Santa Barbara Channel thereof. The term "tidelands", as used in both of said decisions, was intended to describe and did describe all lands below the elevation of mean high tide off the coast of California and within the boundaries of said leases, and no distinction was made as to lands lying below the line of low water mark and

lands between the line of mean low water mark and the line of mean high water mark.

2. An example of the complete reliance placed by defendant State upon the rule of property law announced in the foregoing line of decisions of this Honorable Court is that of *Boone v. Kingsbury* (1928), 206 Cal. 148; 273 Pac. 797, certiorari denied, 280 U. S. 517. The Legislature of the State of California in 1921 enacted a statute (Stats. 1921, p. 404, chap. 303) providing for the execution of prospecting permits and leases from the State of California to citizens of the State and the United States upon tide and submerged lands within the boundaries of the State of California. Pursuant to said legislation numerous applications for permits and leases of tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel were filed with the state officer in charge. A test suit was brought in the Supreme Court of California in case entitled *Boone v. Kingsbury, supra,* involving a parcel of tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel at Seacliff, Ventura County, to test the validity of said statute and the question of whether or not the State had the power to grant prospecting leases and permits of the tide and submerged lands within the State. The Supreme Court of California, in said decision, determined the statute to be valid and issued a writ compelling the state officer to grant the proper leases. The Court there held that the State of California was the owner of the tide and submerged lands lying in the Pacific Ocean and the Santa Barbara Channel thereof, and in so doing reviewed the decisions of this Honorable Court holding the States to be the owners of the tide and submerged

lands within their borders, quoting at length from such decisions as *Shively v. Bowlby,* 152 U. S. 1, *supra:*

> "That such title to the shore and lands under water is regarded as incidental to the sovereignty of the state—a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery—and cannot be retained or granted out to individuals by the United States. Such title being in the state, the lands are subject to state regulation and control, . . ."

This Honorable Court denied a petition for certiorari in *Boone v. Kingsbury, supra,* 280 U. S. 517.

On the faith of and in reliance upon the decision of the Supreme Court of California in *Boone v. Kingsbury, supra,* which in turn placed complete reliance upon the decisions of this Honorable Court establishing a fixed foundation of title to tide and submerged lands, as aforesaid, the State of California has granted in excess of 100 prospecting permits, oil and gas leases and easements of tide and submerged lands extending into various portions of the Pacific Ocean, Santa Barbara Channel and various arms of the Sea. The lessees from the State under said prospecting permits, leases and easements, in reliance upon said rule of property law, have drilled thereunder in excess of 350 oil and gas wells since the year 1921, and have expended, as drilling and development costs (exclusive of operating and maintenance cost) in excess of $20,000,000.00.

XVIII.

1. In connection with the westerly boundary of the State of California, defendant alleges that the 1849 Constitution of the State of California fixed said boundary as extending into the Pacific Ocean three miles and thence

running in a northerly direction following the Pacific Coast to the intersection with the forty-second degree of north latitude, and thence along said north latitude to the place of beginning, including all the islands, harbors and bays adjacent to the coast. The boundary provision of said 1849 Constitution is quoted above.

2. Said boundaries, as established in Article XII, Section 1, of the 1849 Constitution, were confirmed and retained in identical language in the Constitution of California, adopted in the year 1879, with one slight change of wording in the last sentence thereof, which in the 1879 Constitution reads as follows:

> "Also, including all the islands, harbors and bays along and adjacent to the coast." (1879 Constitution, Article XXI, Section 1.)

3. The westerly boundaries of the fifteen coastal counties of the State of California, as established by the State Legislature from time to time, all extend three miles into the Pacific Ocean.

Section 3902 of the Political Code of the State of California, enacted in the year 1872, as amended, provides that:

> "This State is divided into counties, named, bounded and constituted as provided by law. The several counties of this State, as they now exist, and such other counties as may be hereafter organized, according to law, are hereby recognized as legal subdivisions of the State."

Section 3907 of said Political Code, as enacted in the year 1872, provides that:

> "The words 'in,' 'to,' or 'from,' the ocean shore mean a point three miles from shore. The words 'along,' 'with,' 'by,' or 'on' the ocean shore, mean on

a line parallel with and three miles from the shore."

An example of the westerly boundary of a coastal county of the State, substantially identical with the boundaries of all the other coastal counties of the State, is that of Del Norte County, the northernmost coastal county of the State. Section 3916 of said Political Code establishes the boundaries of said Del Norte County, and provides, in part, that:

> "Situated in the northwest corner of the State of California, beginning at a point in the Pacific Ocean, on the forty-second parallel of north latitude, three miles from shore, being on the southern line of Oregon; thence running southerly from ocean shore, to the northern line of Humboldt County; thence easterly . . .; thence northerly . . . to the forty-second parallel of north latitude; then due west to the place of beginning."

The other fourteen coastal counties are identical or similar in their respective westerly boundaries extending three miles into the Pacific Ocean, to wit, the Counties of Humboldt (Political Code Section 3920), Mendocino (Section 3931), Sonoma (Section 3957), Marin (Section 3929), San Francisco, which includes the islands known as the Farralones (Section 3946), San Mateo (Section 3949), Santa Cruz (Section 3952), Monterey (Section 3935), San Luis Obispo (Section 3948), Santa Barbara, which includes the channel islands of Santa Barbara, San Miguel, Santa Rosa, and Santa Cruz (Section 3950), Ventura, which includes the channel islands of Anacapa and San Nicolas (Section 3964), Los Angeles, the southerly boundary of which extends into the Pacific Ocean "to the southwesterly boundary line of the State of California (in the Pacific Ocean); thence northwesterly along the southwesterly boundary line of the State of Cali-

fornia to a point of beginning. Also, the islands of Santa Catalina and San Clemente" (Section 3927), Orange, the northerly boundary line of which extends westerly "a distance of three miles, more or less, to the southwesterly boundary line of the State of California . . .; thence southeasterly by state line to point of beginning" (Section 3938), and San Diego, the northerly boundary line of which extends westerly from "the shore line of the Pacific Ocean, and continuing in the same direction to a point three English miles in said Pacific Ocean, which point is on the westerly boundary line of said State of California; thence southerly along said westerly boundary line of the State of California to the place of beginning" (Section 3945).

The boundaries of said coastal counties of the State were established by the State Legislature in the year 1872 or prior thereto and have ever since been so fixed by law, and have been amended from time to time by the Legislature.

4. The boundaries of the municipalities of the State of California lying adjacent to the Pacific Ocean have been established by law as extending three miles into the Pacific Ocean or as being coincident with the westerly boundary line, in the Pacific Ocean, of the State of California, in numerous instances.

Examples of such municipal boundary lines extending three miles into the Pacific Ocean are those of the Cities of Los Angeles (Stats. 1925, p. 1024) and Long Beach (Stats. 1921, p. 2054), as more particularly set forth in the Second Affirmative Defense hereof.

The municipal boundary of the City of Santa Monica extends westerly "to a point in the westerly boundary line of Los Angeles County (in the Pacific Ocean); thence

southeasterly along the aforesaid boundary line to a point . . ." (Stats. 1907, p. 1007).

The westerly municipal boundary of the City of Santa Barbara extends one-half mile into the Pacific Ocean from the shore line and runs on a line parallel with the shore line and one-half mile therefrom. (Stats. 1917, p. 1824; Stats. 1927, p. 2064.)

Another example of a municipal boundary extending three miles into the Pacific Ocean is that of the City of Avalon on Santa Catalina Island. Said City and Island are situated approximately twenty miles westerly of Point Fermin, being the most westerly point of the mainland shore of the Pacific Ocean in the adjacent vicinity. The municipal boundary line of the City of Avalon, incorporated under the Municipal Incorporation Law as a municipal corporation of the Sixth Class on June 23, 1913, is established as commencing at a designated point in the shore line of the Pacific,

> "thence continuing North 37 deg. 01 min. East to a point three miles out to sea; thence following course of shore line at a distance of three miles out to sea, to a point of intersection of the prolongation northeasterly of the most easterly line of the Town of Avalon, Santa Catalina Island",

as per a designated recorded map.

XIX.

In all the Colonial grants and charters and in all the statutes and court decisions, and in connection with all other matters and things set forth in this First Affirmative Defense, lands beneath navigable waters, whether inland, beneath lakes and rivers or beneath bays and harbors, or off the sea coast, and whether above or below mean low

water mark, have all been treated and considered as being held under a single and common basis of title, namely, as an incident to the sovereignty of the State or of the Crown of England, as the case might be. And the title of the Crown and, subsequently, of the respective States, extended to all lands beneath navigable waters of every kind within the jurisdiction of the Crown and subsequently within the boundaries of each of the respective States. In this connection defendant alleges that the limit of the jurisdiction of the Crown of England and, subsequently, of the boundaries of the respective States, has never been less than 3 miles from the coast line of the open sea and, in the case of bays, harbors and other indentations in the coast line, at 3 miles from and parallel to a straight line connecting the headlands which mark the limit of such bays, harbors or indentations.

Second Affirmative Defense.

1. Plaintiff, United States of America, each of its branches and various of its departments and agencies acting within the scope of their authority as prescribed by law, has, ever since its formation in the year 1789 recognized, asserted, determined, adjudicated and acquiesced in the title and ownership of each of the original States and each of the newly admitted States, including the State of California since its admission in 1850, in and to all tide and submerged lands and all lands below the line of ordinary high water mark within the respective boundaries of each such State (except minor portions thereof granted to private parties or to the United States by the respective States or their grantees, or by prior sovereigns and confirmed by United States patent, or condemned by plaintiff).

2. Such recognition, assertion, determination, adjudication and acquiescence of ownership in the State of California, its grantees and lessees, as well as in the other States, consists of:

(a) Grants and cessions in fee simple made by the respective States to the United States, requested and accepted by the United States, of substantial portions of submerged lands, as well as tidelands, not only along the open coasts within the coastal waters adjacent to and a part of the respective coastal States, but also in and under bays, harbors, rivers and lakes within the respective States.

(b) Leases, easements, licenses and other interests granted by the respective States to the United States, requested and accepted by the United States, of substantial portions of tide and submerged lands, both reclaimed and unreclaimed.

(c) Large numbers of written opinions, prepared by the United States Attorney General and his assistants over many decades, advising the various officers, agencies, branches and departments of the United States, acting within the scope of authority as prescribed by law, in connection with innumerable acquisitions by the United States from the several States or their grantees of tide and submerged lands, advising that the respective States are the owners thereof. Such opinions of the Attorney General are required by Act of Congress making it the duty of the Attorney General and of his subordinates to render favorable title opinions prior to acquisitions of title to any property by the United States where improvements by the United States are proposed to be constructed thereon or thereto.

(d) Innumerable decisions of the General Land Office, Department of the Interior and the Secretary of the Interior, acting within the scope of authority as prescribed by law, over many decades, determining and holding that title to all tide and submerged lands along the open coast as well as within bays, harbors, rivers and lakes, is held by and owned by the respective States and not by the United States;

(e) Innumerable reports of the Chief of Engineers of the United States War Department and of his subordinates, acting within the scope of authority as prescribed by law, in connection with River and Harbor improvements and other matters, many of them reported to and acted upon by the Congress of the United States, that the respective States are the owners of all such tide and submerged lands, and in innumerable instances recommending appropriations by Congress upon the condition that the respective States or their grantees or successors deed or grant

rights or interests to the United States in and to designated portions of tide and submerged lands both under coastal waters on the open coast of the coastal States and within bays, harbors, rivers and lakes.

(f) Other departments, agencies and officers of the United States acting within the scope of their authority as prescribed by law, have rendered opinions and made statements within their official duties, that the respective States are the owners of all tide and submerged lands within their respective boundaries.

3. The details of said instances of recognitions, assertions, determinations, adjudications and acquiescences on the part of the United States that the title and ownership in and to all tide and submerged lands, is in the respective States, including the State of California, are set forth as follows:

A.

Grants to the United States by the State of California.

The State of California has made numerous grants and conveyances to the United States of America pursuant to requests and solicitations by the United States of America, its several branches, departments and agencies acting within the scope of their authority as prescribed by law, of submerged lands and tide lands both along the coast of California and in its harbors, bays, rivers, and lakes. Some of said grants are the following:

I.

Pursuant to request by duly authorized officers of the United States, the State of California, by an Act of the Legislature of March 9, 1897 (Stats. 1897, page 74) granted to the United States parcels of land extending

from mean high water mark out to 300 yards below mean low water mark lying adjacent and contiguous to such lands of the United States within the State of California as lie upon tidal waters and are held, occupied or reserved for military purposes or defense, or lie adjacent and contiguous to islands the title to which is in the United States and are reserved by the United States for any military or naval purpose or for defense. Said statute provides that the boundaries of each parcel of land thereby granted to the United States shall be a line along mean high water mark, a line 300 yards out beyond mean low water mark, and a line at right angles to mean high water mark at the points where the boundaries of the adjacent lands of the United States touch high water mark. Said statute further provides that the title to each parcel of land thereby granted to the United States shall be and remain in the United States only so long as it shall continue to hold and own the adjacent lands then belonging to the United States.

Likewise, at the request of duly authorized officers of the United States, the Legislature enacted a statute on March 2, 1897 (Stats. 1897, page 51) ceding jurisdiction* to the United States over areas extending out 300 yards from low water mark surrounding military or naval reservations. Said statute was a companion statute to the Act of March 9, 1897, above mentioned. Said Act of March

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*7 O. A. G. 629, states that:

> "The resolution [of Congress] of July 11, 1841 (v. Stat. at Large, p. 408) . . . enacts that it shall be the duty of the head of department under whose direction any lands for the purpose aforesaid (light-houses) may be purchased, to apply to the legislature of the state in which it lies 'for a cession of jurisdiction', and in case of refusal to report the same to Congress."

2, 1897 required the United States to file with the State of California a map depicting the area granted to the United States under and by said Act.

Pursuant to said Acts of March 2nd and 9th, 1897, aforesaid, the United States, through its duly authorized officers, prepared and filed with the office of the Surveyor General of the State of California, 17 different maps depicting various submerged areas, thus granted by the State to the United States, some of said lands lying in the Pacific Ocean and some lying in entrances to bays and in bays and harbors of the State. In this connection defendant alleges that:

1. On June 4, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF SAN DIEGO HARBOR, CALIFORNIA" bearing a legend thereon reading as follows:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicted the Military Reservation situated northerly of the Entrance to the Bay of San Diego extending from Point Loma, the northerly headland of the Entrance to San Diego Bay. A strip of submerged lands 300 yards wide extending oceanward from the line of high water mark bears the legend:

> "Line 300 yards out beyond low-water mark."

Said 300 yard strip of submerged lands runs along the open coast of the Pacific Ocean from Point Loma northward a distance of approximately 3 miles; and likewise extends easterly, without any break, around the tip of Point Loma into the Entrance of and the Bay of San Diego a distance from Point Loma into the Bay of San Diego of approximately 3 miles. Said strip consists of an area in excess of 300 acres of submerged lands both on the open coast of California outside of any harbor, bay, river or lake, and, without any distinction, likewise extends into and around the Entrance to the Bay and into the Bay of San Diego.

A copy of the map dated June 4, 1897, filed with the Surveyor General of the State of California by the United States of America covering the Military Reservation at San Diego, as aforesaid, is set forth as follows:

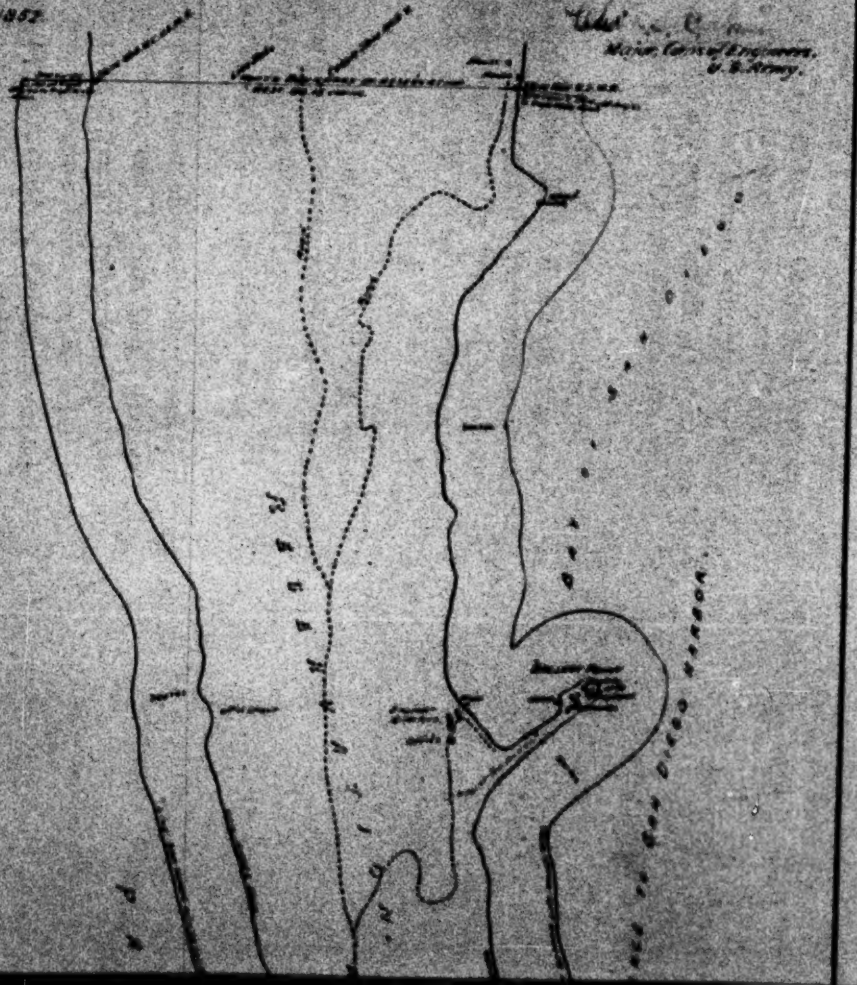
MAP
OF THE
MILITARY RESERVATION,
San Diego Harbor, California.

Compiled from the official records, under the direction of Major Cornelius L. L. B. Davis Corps of Engineers, U.S.A., to meet the requirements of the Acts of the Legislature of the State of California. Approved March 24th 1847, and March 27th 1851.

Office, June 4th 1857.

Executive Office February 26th 1852.

Major Corps of Engineers,
U.S. Army.



PACIFIC
OCEAN

2. On June 4, 1897, the United States of America, through its Officer in Charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed a map with the Surveyor General of the State of California entitled "MAP OF THE ZUNINGA SHOAL TRACT, SAN DIEGO HARBOR, CALIFORNIA." Said map bears the legend:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A. to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1879 (*sic*) and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards wide extending seaward from the low-water mark the exterior line of which bears the legend

> "Line 300 yards out beyond low-water mark."

Said strip lies on the open coast of the Pacific Ocean outside and seaward of the entrance to San Diego Harbor, and runs along the coast a distance of approximately 1000 yards covering an area of approximately seven acres of submerged lands on the open coast of California outside of any bay or harbor.

A copy of said "Map of the Zuninga Shoal Tract" filed by the United States of America with the Surveyor General of the State of California as aforesaid is set forth as follows:

3. In April, 1897, the United States of America, by its Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF THE PRESIDIO OF SAN FRANCISCO, CALIFORNIA." Said map shows a strip of submerged lands 300 yards wide extending around the perimeter of the Presidio grounds. The exterior line of said strip bears the legend:

> "A line three hundred (300) yards out beyond low water mark."

Said strip of land contains a further legend:

> "Piece or parcel of land granted, released and ceded to the United States by Act of California Legislature, approved March 9th, 1897."

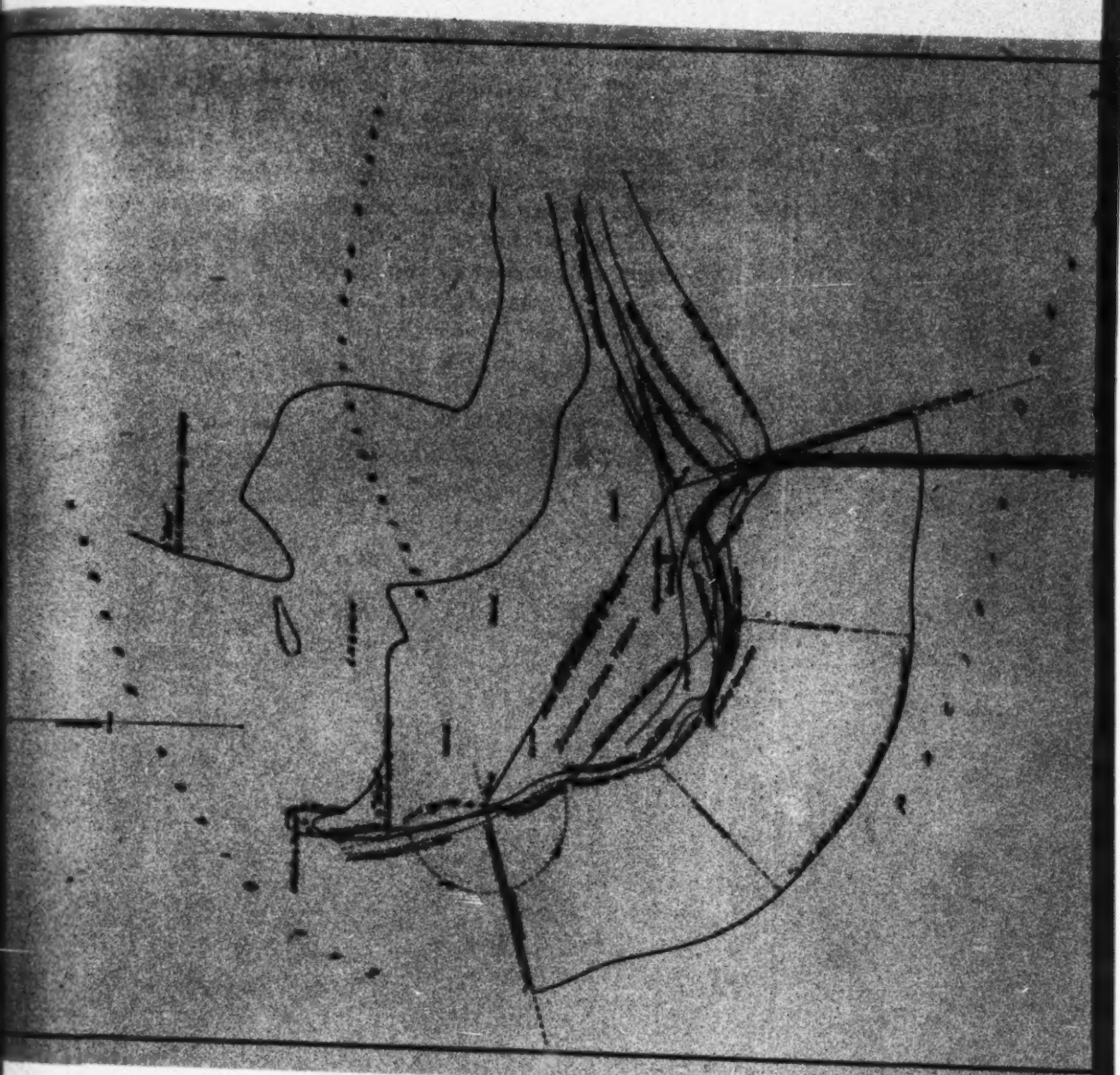
The westerly portion of said strip, approximately 1⅓ miles in length, is shown on said map adjacent to the legend

> "Pacific Ocean."

As said strip turns northerly on said map at the extreme point of the Presidio grounds and runs in an easterly direction it is shown adjacent to the legend on said map reading

> "Bay of San Francisco",

and runs a distance of approximately 1½ miles past said point of the Presidio grounds. Said strip 300 yards wide and approximately 2½ miles in length, is depicted on said map, as to approximately 45% thereof, as being situated on and along the "Pacific Ocean" with the balance of said strip lying on and along the "Bay of San Francisco."

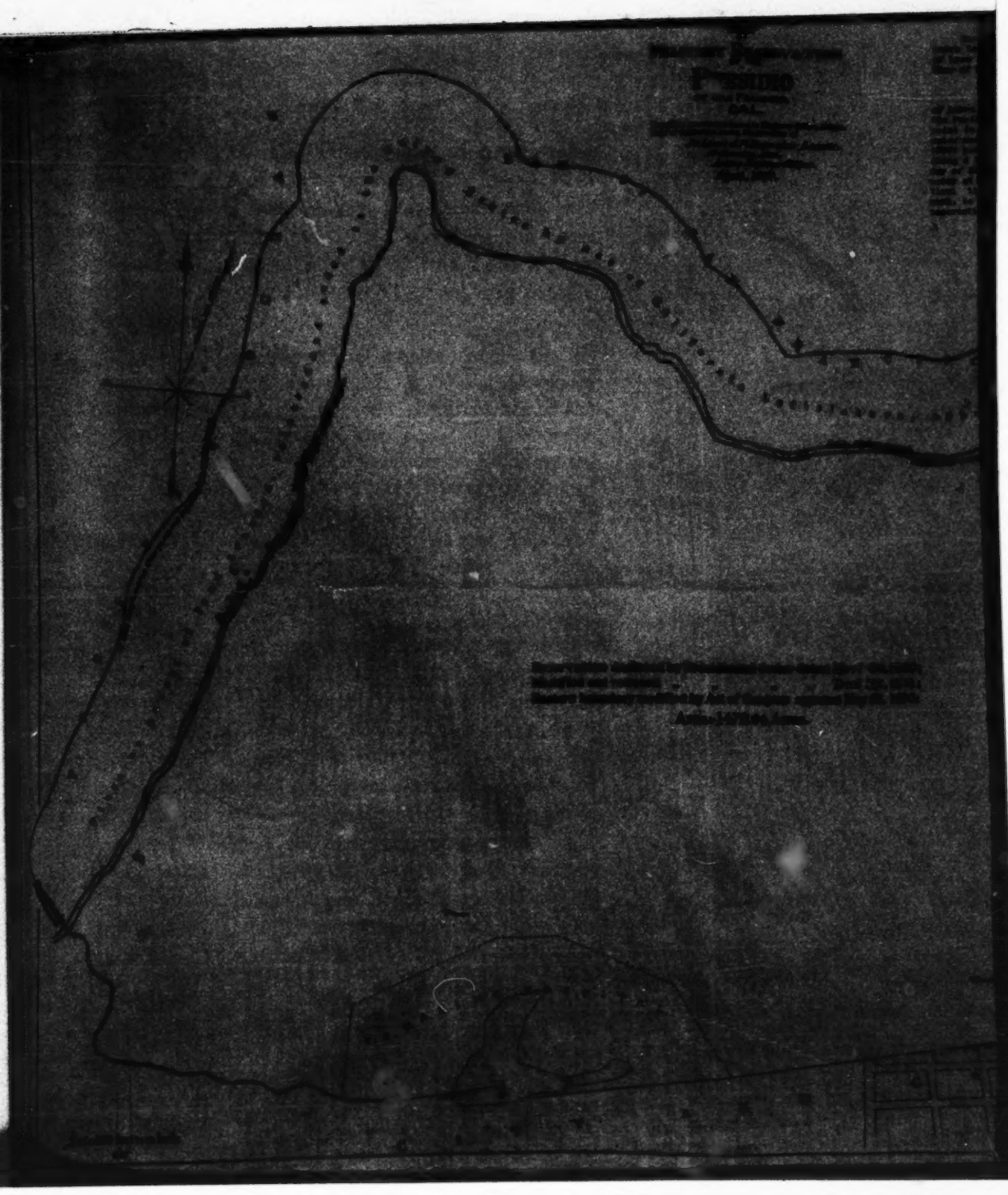


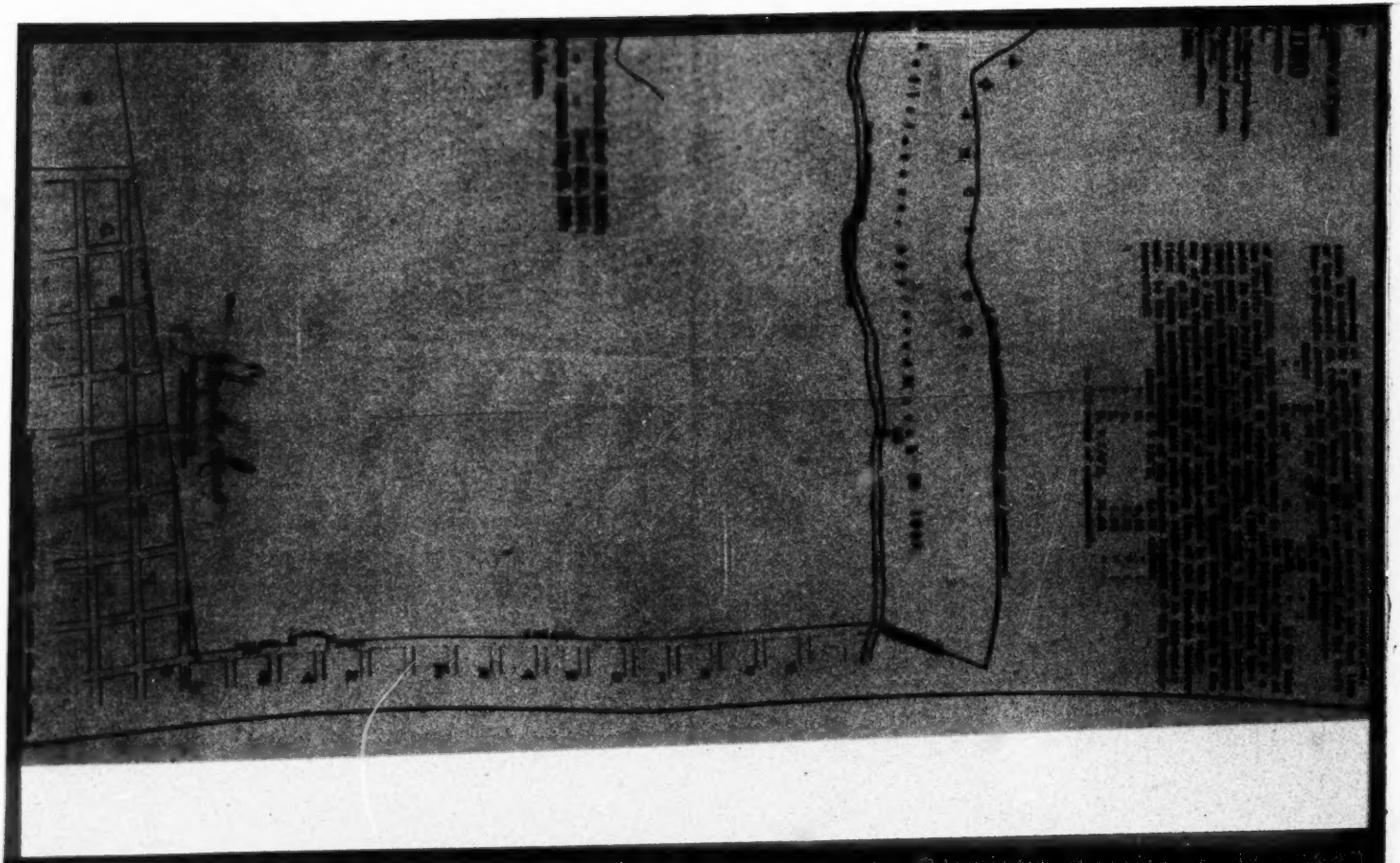

MAP
OF THE
ZUNINGA SHOAL TRACT.
San Diego Harbor.
California.

The metes and bounds description contained on said map reads, in part, as follows:

"Thence through Lobos Creek to the line of high-water on the Pacific Ocean; thence at right angles to said high-water line *to the point in the Pacific Ocean,* three hundred (300) yards out beyond low-water mark; thence in a northerly direction along a line three hundred (300) yards out beyond low-water mark *of the Pacific Ocean* and easterly along a line three hundred (300) yards out beyond low-water mark *in the Bay of San Francisco* to a point at right-angles to the line of high-water at its intersection with the easterly line of the Presidio Reservation . . ."

A copy of said "Map of Presidio Military Reservation" so filed by the United States with the Surveyor General of California is as follows:



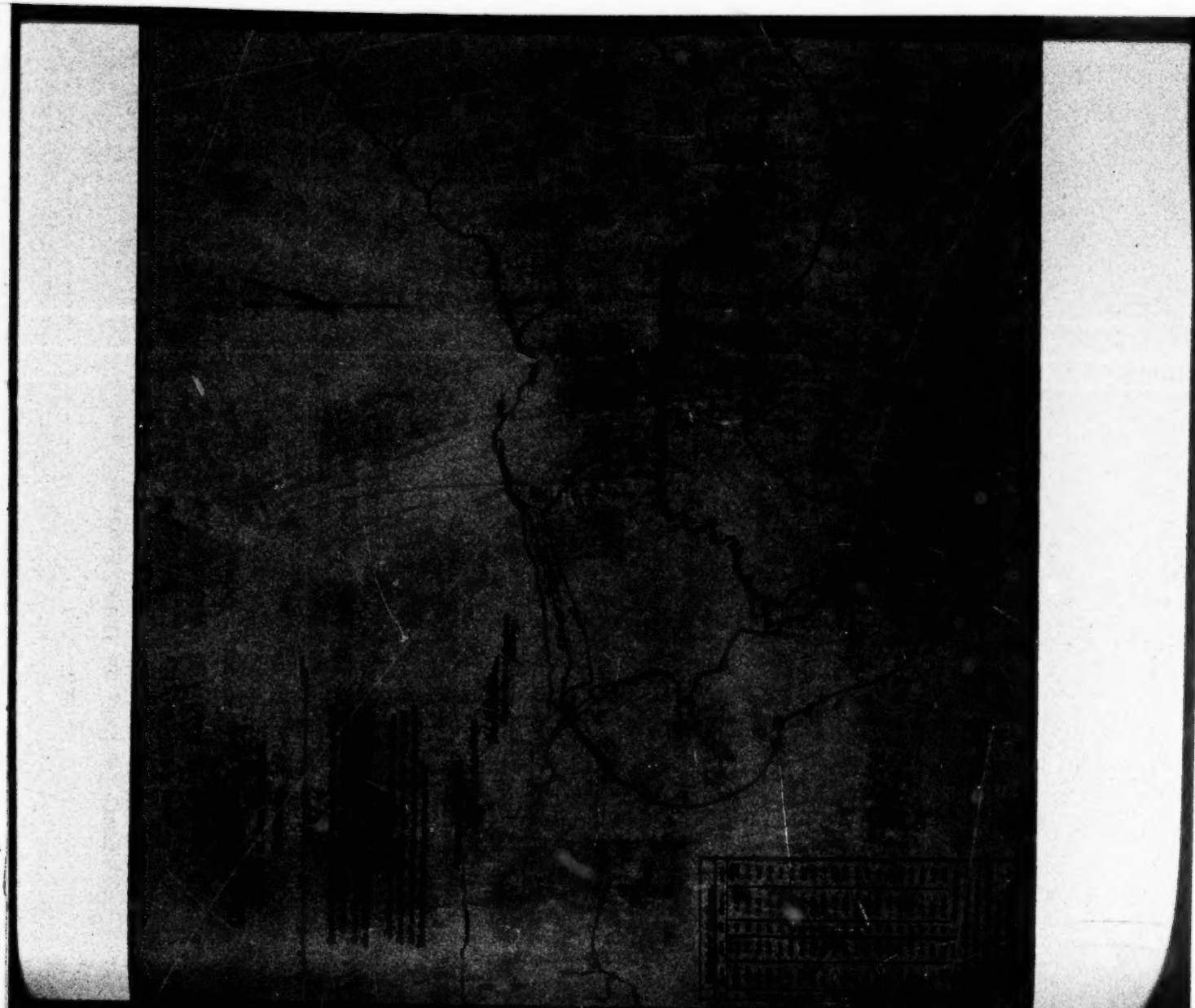


4. On June 4, 1897, the United States of America, by its Officer in Charge of Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF THE LIME POINT TRACT, HARBOR OF SAN FRANCISCO." Said map bears a legend reading:

> "Compiled from the official records, under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Act of the Legislature of the State of California, approved March 2nd 1897. Jurisdiction ceded by the State of California to the United States, by Act of Legislature approved April 16th, 1859, over this Tract and 'over all the contiguous shores, flats and waters within five hundred (500) yards from low water mark.'"

Said map depicts a strip of submerged land 500 yards wide extending from a point on the shore of the Pacific Ocean approximately ¾ of a mile northerly to Point Bonita (the northern exterior headland of the Straits of the Golden Gate), with said 500-yard strip running southerly a distance of approximately ¾ of a mile along the coast of the Pacific Ocean to Point Bonita; then turning into the Straits of the Golden Gate and running northeast and around said Point in a locality depicted thereon as "Golden Gate", then northeast and thence in an easterly direction to a locality bearing the legend "Bay of San Francisco"; thence running in a northerly direction to its termination.

A copy of said Map of Lime Point Tract, Harbor of San Francisco, California, filed with the Surveyor General of the State of California, as aforesaid, is set forth as follows:





5. On January 24, 1906, the United States of America, through its Officer in Charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "DEADMAN'S ISLAND MILITARY RESERVATION, SAN PEDRO, CALIFORNIA." Said map bears the legend:

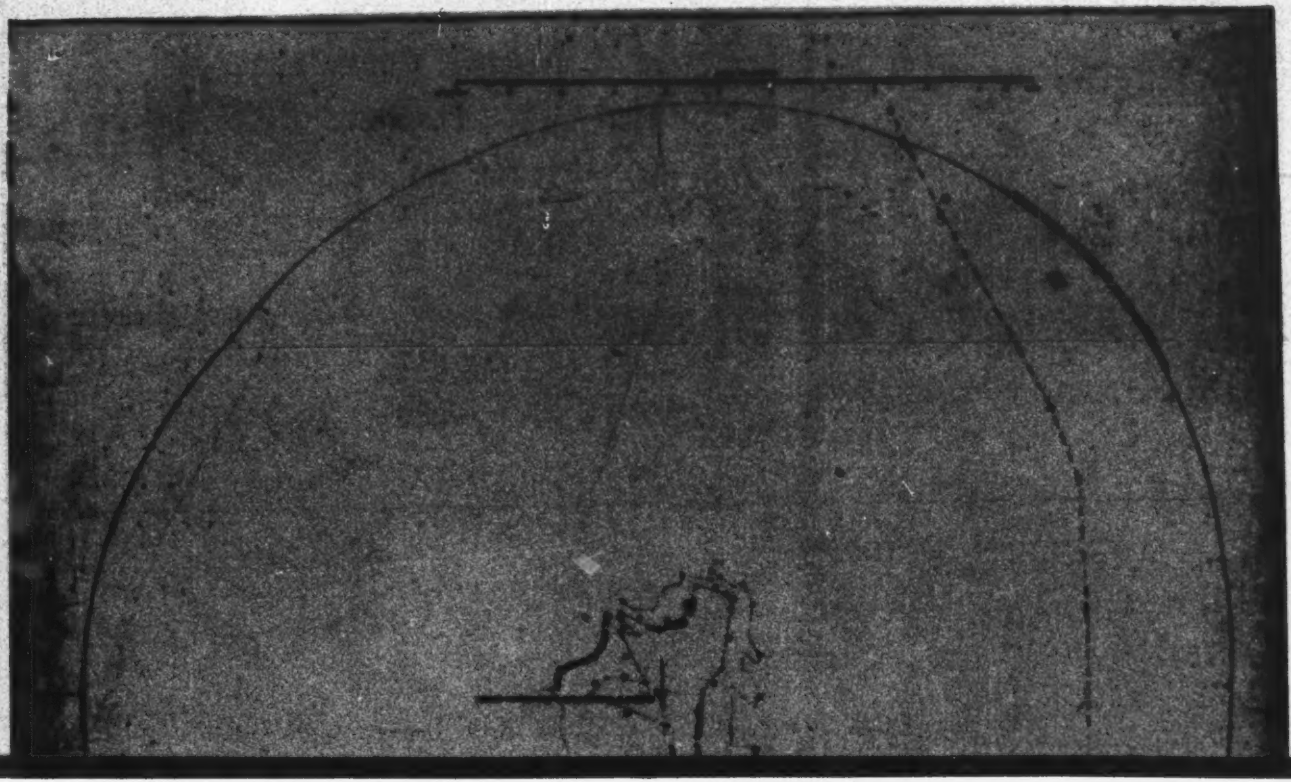
> "Compiled from official records to meet the requirements of the Acts of the Legislature of the State of California, approved March 2, 1897 and March 9, 1897."

Said map shows a small island approximately 200 yards in length and less than 150 yards in width, and also a rough circle completely surrounding said island extending out 300 yards therefrom, the exterior line of which bears a legend reading

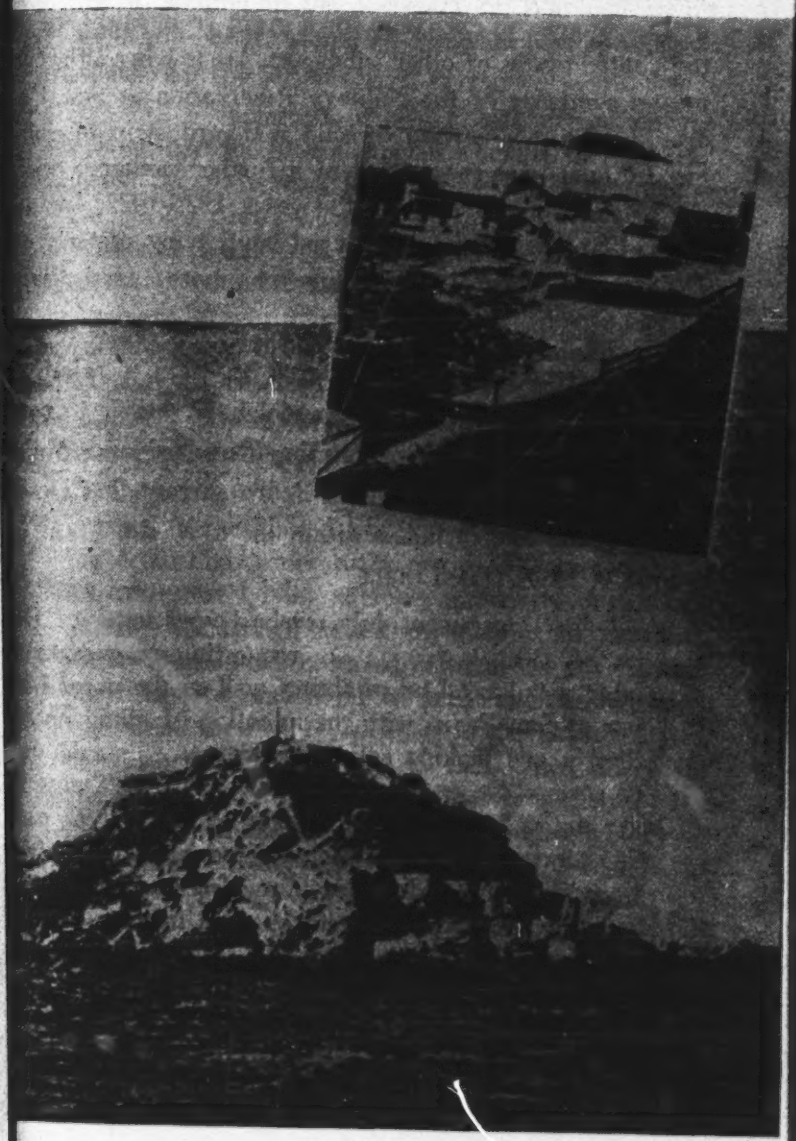
> "Line 300 yards out beyond low-water mark."

Deadman's Island and said submerged lands surrounding it were situated in the Pacific Ocean and Bay of San Pedro.

A copy of the Map of Deadman's Island filed with the Surveyor General of the State of California, as aforesaid, is set forth as follows:



Two pictures subjoined hereto correctly depict Deadman's Island as it existed prior to its destruction, as hereinafter alleged:



A 9.75 acre portion of the submerged lands included in the 300 yard strip around Deadman's Island Military Reservation, as shown on said map of January 24, 1906, was deeded in 1915 by the United States back to the City of Los Angeles in exchange for a grant from said City to the United States of other submerged lands lying adjacent to and southerly of the Military Reservation at San Pedro. Likewise a portion of said 300-yard strip of submerged lands was the subject of a further exchange with the City of Los Angeles in the years 1925-1927, for an area of 61.98 acres of submerged lands lying easterly of Deadman's Island; as hereinafter more particularly alleged.

The Secretary of War, on March 25, 1906, in rejecting an application for permit of Randolph H. Miner to construct a bulkhead and fill in certain submerged lands in the Pacific Ocean and Bay of San Pedro surrounding Deadman's Island and included within the aforesaid grant of March 9, 1897, stated that:

> "The Department duly received your letter of December 30th last . . . requesting permission to build a bulkhead or retaining wall in the outer harbor of San Pedro with the intention of filling up behind it and making solid ground . . ., said wall to enclose *the area granted to the United States by the Act of March 9, 1897* (Stats. of Calif. 1897, page 74) along with other water-covered lands which it is understood are to be filled in and reclaimed, thus destroying the natural waterfront and making an artificial one along *the side of the premises granted by the state.*
>
> "Replying thereto I beg to inform you that the submerged lands belonging to the United States

which it is proposed to reclaim cannot be disposed of without authority of Congress."

On May 11, 1906 the Chief of Engineers, U. S. Army, reported in writing to the Secretary of War concerning said application of Randolph H. Miner in part as follows: thereof bearing the legend:

". . . approval of which was denied on the ground that the fill contemplated behind the bulkhead would occupy *certain lands under water granted to the United States by the State of California.* . . . This action was taken after reference of the matter to the Judge Advocate General."

This grant of a strip of submerged lands around Deadman's Island was reported to Congress by the Secretary of War in 1924, House Document No. 349, 68th Congress, 1st Session, page 38, as follows:

"By act of legislature, the State of California granted to the United States parcels of land extending from high water mark out to 300 yards beyond low water mark lying adjacent and contiguous to such lands of the United States, any such as lie upon tidal waters to be held, occupied or reserved for military purposes or defense lying adjacent and contiguous to any island the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense. The United States has claim to land of approximately 36 acres around Reservation Point and lying easterly of the probable 1000 foot channel. . . ."

6. On June 4, 1897, the United States of America, through its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General

of the State of California, a map entitled "MAP OF THE MILITARY RESERVATION AT SAN PEDRO, CALIFORNIA." Said map bears the legend:

> "Compiled from the official records under the direction of Major Charles E. L. B. Davis, Corps of Engineers, U. S. A., to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards wide lying in the Pacific Ocean and Bay of San Pedro in front of the Military Reservation, with the exterior line thereof bearing the legend:

> "Line 300 yards out beyond low-water mark."

A copy of said map dated June 4, 1897, is set forth as follows:

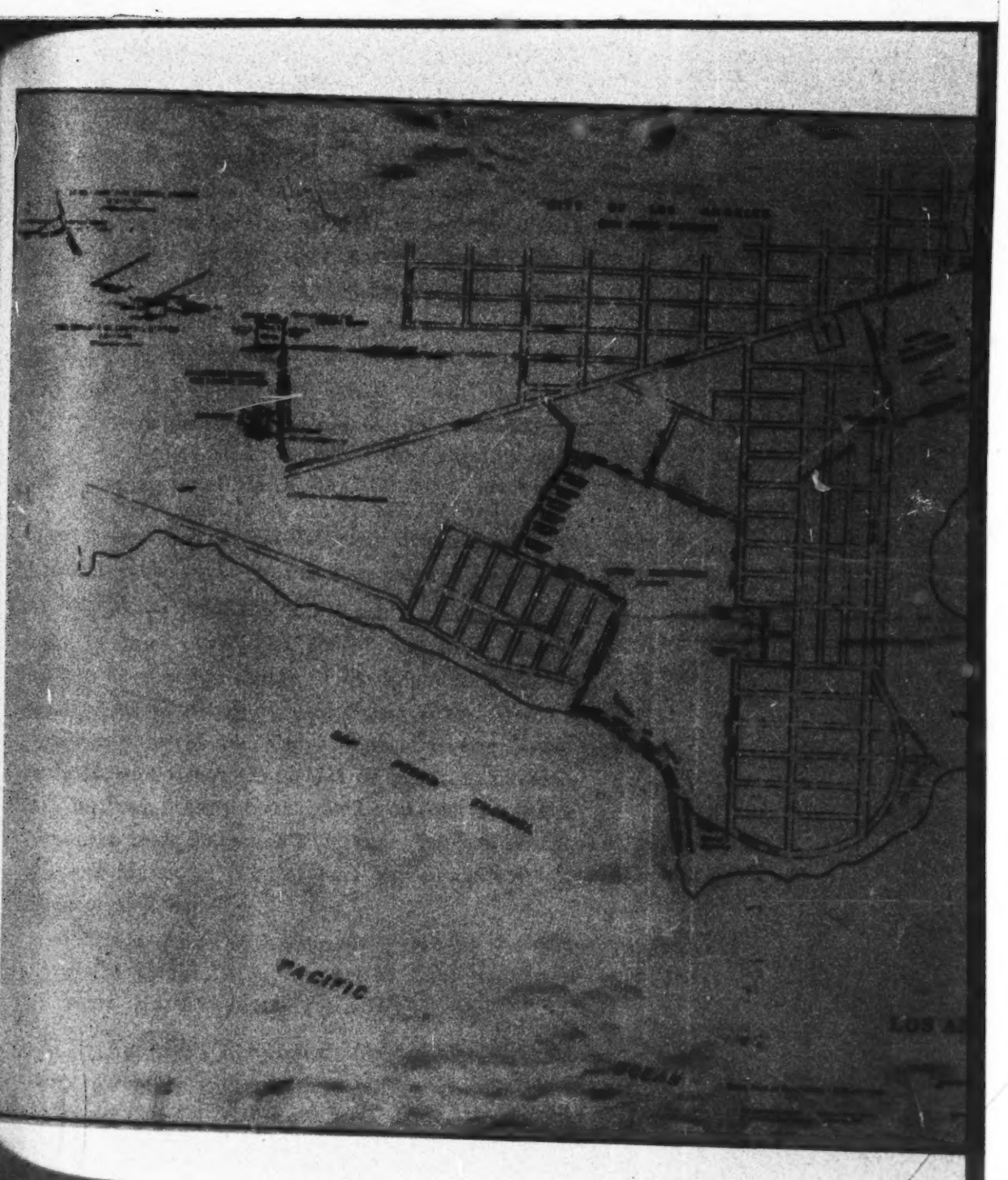
The Secretary of War and the Judge Advocate General of the United States Army under date of September 25, 1933, prepared a certificate of the boundaries of Fort McArthur (Military Reservation at San Pedro) setting forth the metes and bounds of the boundary of said Reservation, attached to which was a map thereof, and filed the same for record in the office of the County Recorder of Los Angeles County, California as "Recorder's Filed Map 698-R". Said certificate reads in part as follows:

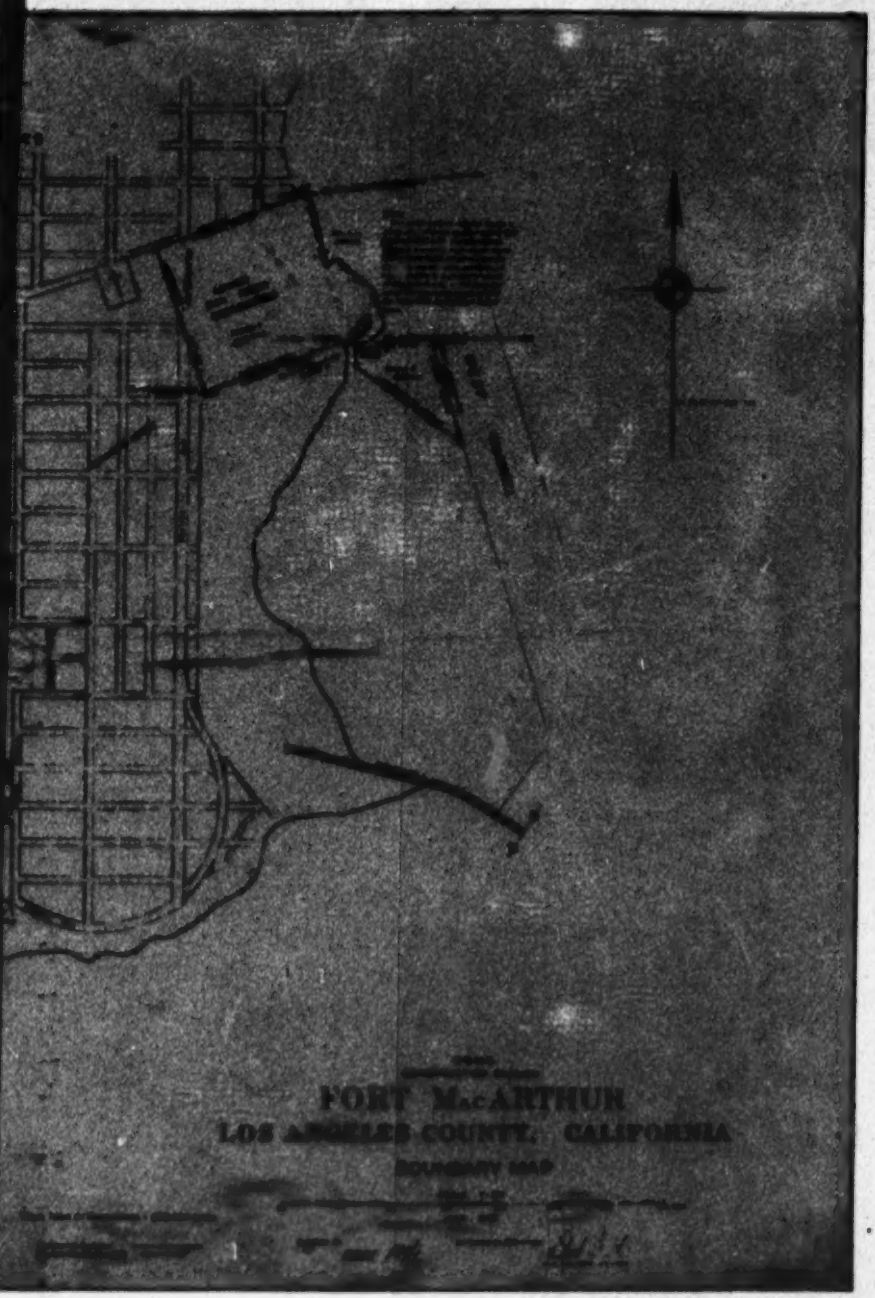
> "I hereby certify that Kyle Rucker, Colonel, Judge Advocate General's Department, who signed the foregoing certificate, was at the time of the signing thereof, the Acting The Judge Advocate General, United States Army, and as such was custodian of all deeds and papers pertaining to the title to all military reservations of the United States and that to his certification as such full faith and credit are, and ought to be given. It is hereby directed that, ***pursuant to the provision of the Act of the Legislature of California, approved March 2, 1897 (Calif. Stats. 1897, p. 51), the metes and bounds description and boundary map referred to in the above certificate be filed*** in the proper office of record in the county in which said reservation is located.
>
> In Testimony Whereof, I, George H. Dern, Secretary of War, have hereto caused the seal of the War Department to be affixed, and have subscribed my name at the City of Washington, this 2nd day of October, 1933.
>
> GEORGE H. DERN
> Secretary of War.
> (Seal)
>
> Recorded at the request of the United States of America, War Department . . . etc."

The map accompanying said certificate thus filed for record bears a legend reading:

> "NOTE: *This area ceded to United States by State of California by Act of Mar. 9, 1897,* (Cal. Stats. 1897, p. 74); the boundaries being a line along high water mark, *a line three hundred yards out below low water mark,* and lines at right angles to high water mark at the points where the boundaries of the adjacent lands of the United States touch high water mark."

A copy of said map of Fort McArthur accompanying said certificate of the Secretary of War is set forth as follows:


PACIFIC


FORT MacARTHUR
LOS ANGELES COUNTY, CALIFORNIA
BOUNDARY MAP

7. In April, 1897, the United States of America, through its officer in charge of the Engineer Office in California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a "MAP OF MILITARY RESERVATION OF ANGEL ISLAND, CAL.," depicting a strip of submerged lands 300 yards wide completely surrounding Angel Island, located in the Bay of San Francisco. Said 300-yard strip on said map bears the legend

> "Piece or parcel of land granted, released and ceded to the United States by Act of the California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip around Angel Island bears the legend "A line three hundred (300) yards out beyond low-water mark."

8. In April, 1897, the United States of America, through its officer in charge of the Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF FORT MASON, CAL." Said map depicts a strip of submerged lands 300 yards wide, extending into the Bay of San Francisco in front of Fort Mason, and bears the legend on said map

> "Piece or parcel of land granted, released and ceded to the United States, by Act of California Legislature, approved March 9th, 1897."

9. In April, 1897, the United States of America, by its officer in charge of the Engineer Office, Department of

California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION AT BENICIA, CAL." Said map depicts a strip of submerged lands 300 yards in width lying in Suisun Bay and the Straits of Carquinez in front of the Benicia Military Reservation. Said 300-yard strip on said map bears the legend

> "Piece or parcel of land granted, released and ceded to the United States, by Act of California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip bears the legend on said map

> "A line three hundred yards out beyond low-water mark."

Said map also bears the legend reading in part as follows:

> "all that parcel of land bounded by a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right angles to high-water mark at the points where the adjacent lands of the United States touch high water mark (by Act of California Legislature, approved March 9th, 1897)."

10. In April, 1897, the United States of America, by its officer in charge of the Engineer Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a "MAP OF MILITARY RESERVATION OF ALCATRAZ ISLAND, CAL." Said map depicts a strip of submerged lands 300 yards wide entirely surrounding Alca-

traz Island in the Bay of San Francisco, and thereon bears the legend reading:

> "Piece or parcel of land granted, released and ceded to the United States by Act of the California Legislature, approved March 9th, 1897."

The exterior line of said 300-yard strip bears the legend:

> "A line three hundred (300) yards out beyond low-water mark."

Said map also bears the legend reading:

> "Also:—all that parcel of land bounded by a line along high-water mark and a line of three hundred (300) yards out beyond low-water mark . . . (by Act of California Legislature approved March 9, 1897)."

11. In May, 1897, the United States of America by its officer in charge of the Engineer's Office, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF MILITARY RESERVATION AT SAN DIEGO, CAL." Said map depicts a parcel of land extending 300 yards beyond low-water mark in the Bay of San Diego lying in front of said Military Reservation and bears a legend reading:

> "Piece or parcel of land granted, released and ceded to the United States, by Act of the California Legislature, approved March 9, 1897."

The exterior line of said parcel bears the legend on said map:

> "A line three hundred (300) yards out beyond low-water mark."

12. On June 26, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a map entitled "MAP OF RED ROCK OR MOLATE ISLAND, SAN FRANCISCO BAY, CAL." Said map bears the legend reading in part:

> ". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897, and March 9th, 1897."

Said map depicts a small island situated in the Bay of San Fransisco encircled by a line bearing the legend:

"300 yds. beyond low water line."

13. On June 4, 1897, the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California a map entitled "MAP OF THE CORONADO BEACH TRACT, SAN DIEGO HARBOR, CALIFORNIA." Said map bears a legend reading in part:

> ". . . To meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged lands 300 yards wide extending into the Bay of San Diego beyond the line of low-water mark adjacent to said Coronado Beach Tract, the exterior line of said strip bearing a legend:

"Line 300 yards out beyond low-water mark."

All submerged lands adjoining said "Coronado Beach Tract," depicted on said map of June 4, 1897, as well as adjoining tidelands, so granted to the United States, were the subject of a proposed exchange for a 32.8 acre parcel of submerged lands situated in the Pacific Ocean, initiated by the United States of America in the year 1941, as hereinafter more particularly alleged. In said proposed exchange, suggested by the United States in 1941, the United States recognized and asserted the reversionary title and interest of the State of California under said Act of March 9, 1897, in the event the United States no longer maintained and used said "Coronado Beach Tract" as and for a Military Reservation.

In the letter request of the War Department to officials of the State of California soliciting and requesting enactment by the California Legislature of authorization for the proposed exchange (hereinafter more particularly described), said War Department stated in writing, under date of May 27, 1941, that:

> "Reference is made to California Statutes . . . approved March 9, 1897, by which title to so-called tidelands and submerged lands adjacent to and contiguous to such lands of the United States as lie upon tidal waters, etc., and are held for military purposes, reverts to the State whenever the United States land is sold.
>
> "It is noted that the legal description of the military reservation identified as Parcel 3 [on the map transmitted with said War Department letter] defines the uplands area only, it being understood that

under the provisions of the Statute hereinabove mentioned, title to tidelands and submerged lands passes to the State upon sale of the reservation. However, in order to define the limits of an area on the ocean side equivalent to the area embraced within the total boundaries of the reservation on the Bay side, it was necessary to compute an area of combined tidelands and submerged lands based on the metes and bounds described in the statute hereinabove mentioned.

"The metes and bounds with computed areas are shown on the inclosed map. It is the intention and purpose of the United States to convey to the State all right, title, and interest it may now have in the military reservation, together with its adjacent and contiguous tidelands and submerged lands. . . ."

14. On June 26, 1897, the United States of America, by its officer in charge of Corps of Engineers, Department of California, United States Army, War Department, prepared and filed with the Surveyor General of the State of California, a map entitled "MAP OF THE BROTHERS AND THE SISTERS, SAN FRANCISCO BAY, CAL." Said map bears the legend reading in part:

". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts two small islands lying between San Fransisco Bay and San Pablo Bay, each island being encircled by a line which bears the legend:

"300 yds. from l. w. mark."

15. A map bearing a legend:

"PLAT OF THE U. S. MILITARY RESERVATION AT MONTEREY."

was filed on behalf of the United States of America with the Surveyor General of the State of California, depicting a strip of submerged land 300 yards wide located in the Bay of Monterey lying in front of the Military Reservation of Monterey and bearing a legend:

> "All that parcel of land bounded by a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right-angles to high-water mark at the points where the adjacent lands of the United States touch high-water mark (by Act of California Legislature approved March 9th, 1897)."

16. On June 26, 1897, a map entitled "MAP OF MARIN ISLANDS, SAN FRANCISCO BAY, CAL." was prepared and filed with the Surveyor General of the State of California by the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department, bearing a legend reading in part:

> ". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897, and March 9th, 1897."

Said map depicts two small islands labeled "Marin Islands" lying in the San Francisco Bay, said islands being encircled by a line bearing a legend reading as follows:

"300 yds. beyond low water line."

17. On June 4, 1897, a map entitled "MAP OF YERBA BUENA ISLAND, HARBOR OF SAN FRANCISCO, CALIFORNIA" was prepared and filed with the Surveyor General of the State of California by the United States of America, by its officer in charge of the Corps of Engineers, Department of California, United States Army, War Department. Said map bears the legend reading in part:

> ". . . to meet the requirements of the Acts of the Legislature of the State of California, approved March 2nd, 1897 and March 9th, 1897."

Said map depicts a strip of submerged land 300 yards out beyond low-water mark encircling "Yerba Buena Island" in the San Francisco Bay. The exterior line of said 300 yard strip bears the legend:

> "Line 300 yards out beyond low-water mark."

On April 17, 1942, the United States of America filed a complaint in condemnation in the United States District Court for the Northern District of California, Southern Division, entitled "United States of America v. 380 Acres of tidelands and submerged lands, more or less, in the Bay of San Francisco, California, *et al.,*" being No. 22164-W. The lands therein described as sought to be taken and condemned were alleged as being "tidelands and submerged lands known as Treasure Island", and were then more particularly described by metes and bounds, with an exception reading in said complaint as follows:

> "Excepting from said *grant* (*sic*) that portion of the lands above particularly described, lying northerly of Yerba Buena Island and adjacent thereto, *extend-*

ing from high water mark to 900 feet beyond low water mark, the latter portion so excepted being a part of the lands granted and ceded by the State of California to the United States of America by that certain act of the Legislature of the State of California entitled 'An Act relinquishing to the United States of America the title of this State to certain lands,' approved March 9, 1897."

The United States of America has thus at all times since March 9, 1897, claimed and asserted title under the grant from the State of California of portions of its submerged lands pursuant to said statute.

II.

In the year 1931 the State of California, by Act of its Legislature, at the request and solicitation of the United States of America, Navy Department, granted to the United States title to certain submerged lands along the coast of the Pacific Ocean westerly of North Island outside of the Bay of San Diego, as well as certain tidelands adjacent thereto, and also tidelands and submerged lands in the entrance to the Bay and in the Bay of San Diego. In this connection, defendant alleges that:

1. On September 24, 1930, the Commandant of the 11th Naval District, Navy Department, United States of America, prepared and forwarded to the Chief of Naval Operations a report on the necessity of the United States of America acquiring title from the State of California to tide and submerged lands along the shore of the Pacific Ocean adjacent to North Island in San Diego County, California, as well as the necessity for acquiring the State's tide and submerged lands adjacent to North Island

on the Bay side thereof in the Bay of San Diego. Said report contained a detailed statement of the history of the titles to North Island and to the tide and submerged lands surrounding North Island both in the Pacific Ocean and in the entrance to the Bay and in the Bay of San Diego. In stating the history of the title to North Island, said report reads in part as follows:

> "The island or peninsula of San Diego was a Mexican Grant made to Pedro Carillo on May 18, 1846 by Pio Pico, then Constitutional Governor of the Department of California. The so-called island or peninsula of San Diego included all of what is known as North Island, South Island (Coronado), the strand adjoining the above Islands and the strand adjoining South Island to the main land.
>
> "The State of California was admitted to the Union by Act of Congress on September 9, 1850, by which Act the United States accepted the Constitution of California as presented. That Constitution fixed the boundaries of the State of California. * * *
>
> [The report proceeds to state the facts of the proceedings under the Act of Congress of March 3, 1851, confirming the Mexican Grant to the successors of Carillo and the issuance of a United States Patent in confirmation thereof on June 11, 1869.]
>
> "The acquisition of North Island by the United States was under condemnation proceedings. Final order of the court was entered June 1, 1920, and The Coronado Beach Company, at that time owner, gave the Government a quit-

claim deed to North Island, which was dated December 30, 1921. . . .

"* * * * * * * *

"From the time of the Government's acquisition of North Island to February 15, 1928, the harbor lines as established by the War Department along the northerly and northwesterly sides of North Island consisted of a pier head line which was located, for a considerable portion of its length, beyond the limits of the peninsula of San Diego shown on the Patent Plat approved June 11, 1869, to a bulkhead which laid entirely within the limits of the peninsula of San Diego as shown on said Patent Plat. Therefore, as no filling could be done beyond the bulkhead line and no use could be made of the submerged lands between the bulkhead line and the pier head line, except for the erection of piers and similar structures, the question of ownership of the tidelands was not important to the Government. However, on February 15, 1928, the War Department modified the harbor lines along the northerly and northwesterly side of North Island and established a combined pier head and bulkhead line which for a part of its course lies beyond the limits of the peninsula of San Diego as shown on the Patent Plat approved June 11, 1869. Thus, there is a small triangular area of tideland between the existing combined pier head and bulkhead line to the Government's property line. This small triangular piece of tideland is the subject of basic letter and is shown on the photostat attached to enclosure D of basic letter. *It appears from the above that the title to this triangular piece of tideland has never been conveyed to the Federal Government nor to any mu-*

nicipality and therefore still lies with the State of California."

[The report then sets forth a description of the triangular piece of tideland above referred to.]

"4. In connection with the matter of tidelands adjacent to North Island there are other areas which should be given consideration, particularly the tidelands lying along the east shore of North Island in the Spanish Bight. It is desirable that the tidelands in Spanish Bight not already transferred to the City of Coronado should be ceded to the Government. The Legislature of the State of California, by an Act approved April 27, 1923 (California Statutes 1923, Chapter 49), conveying to the City of Coronado certain tidelands, situated in the Bay of San Diego, in the following language:

[giving the granting clause of said Statute, and then setting forth the boundaries of the City of Coronado as it was incorporated in the year 1890]

"From the above it appears that the boundaries of the City of Coronado extend to the low water mark and therefore that the tidelands conveyed by the State of California extend to the low water mark except where the pierhead line has been established by the Federal Government, in which case Coronado's title to tidelands extends to the said pierhead line. No pierhead line has ever been established in Spanish Bight nor is it probably that the Government will establish such a line, particularly south of the bridge which crosses the bight on the prolongation of Fourth Street, Coronado. . . . *The Government*

should then request the State to cede to it all the tidelands adjacent to North Island in Spanish Bight not already conveyed to the City of Coronado. The description of these lands is as follows:

> [setting forth the legal description. This legal description is contained in Section 1, subparagraph B of the 1931 Legislative grant hereinafter quoted.]

"5. There are still other tidelands adjacent to North Island to which the Government should secure title. *These are the tidelands along the Ocean front. At the present time title to these lands lies with the State and technically therefore the Government does not have control of the beach.* The description of these lands is as follows:

> [setting forth the description of tidelands *and submerged* lands extending out to the pierhead line in the Pacific Ocean *as the same may thereafter be established by the Federal Government.* Said description set forth in Paragraph 5 of said report is the same as the description in Section 1, subparagraph C, of the 1931 Legislative Grant from the State of California to the United States of America hereinafter quoted.]"

Attached to said report of September 24, 1930, as an exhibit, is a map of North Island showing the "newly combined pierhead and bulkhead line", showing the physical situation around North Island as described in said report. The Pacific Ocean adjoins North Island in the lower portion of the map. A copy of said map is set forth as follows:

NORTH
ISLAND

2. The exact matters contained in the report of the Commandant of the 11th Naval District, dated September 24, 1930, as aforesaid, were presented by the United States of America to the Legislature of the State of California, with the request that title, in accordance with such recommendations, should be conveyed to the areas of tide and submerged lands mentioned in said report of September 24, 1930, aforesaid. Pursuant thereto, the Legislature enacted a statute approved May 11, 1931, being Chapter 293, Statutes of California 1931 (Stats. 1931, p. 707). The Statute reads as follows:

"AN ACT *authorizing the department of finance to convey by deed certain tidelands belonging to the State of California situate in the county of San Diego, State of California.*

"The people of the State of California do enact as follows:

"Section 1. The department of finance is hereby authorized and empowered to convey to the United States of America by quit claim deed or other instrument, upon such terms and conditions as shall apear in the judgment of the director of finance to be for the best interests of the State of California, *in and to all tidelands and submerged lands* (whether filled or unfilled), *held by said state by virtue of its sovereignty,* situated in the bay of San Diego, in Spanish bight in the bay of San Diego, *and in the Pacific Ocean,* in the county of San Diego, State of California, adjacent to North island and the strand connecting North Island with South Island Coronado, more particularly described as follows:

"(a) All tidelands and submerged lands situated along the north, northwesterly, and west-

erly side of North Island, lying between the line of the peninsula of San Diego, as shown on the plat accompanying the United States patent to the peninsula of San Diego, dated June 11, 1869, and the pierhead line in the bay of San Diego as the same has been or may hereafter be established by the federal government.

"(b) All tidelands and submerged lands situated in Spanish bight, in the bay of San Diego, adjacent to North island and the strand connecting North island with South Island Coronado, lying between the line of the peninsula of San Diego as shown on the plat accompanying United States patent to the peninsula of San Diego, dated June 11, 1869, and the low water mark in said Spanish bight and lying between the said line of the peninsula of San Diego and the pierhead line in said Spanish bight, as the same may hereafter be established by the federal government; save and except the tidelands and submerged lands in said Spanish bight conveyed to the city of Coronado, a municipal corporation in the county of San Diego, State of California, by an act of the legislature of the State of California approved April 27, 1923 (California statutes, 1923, chapter 49).

"(c) *All tidelands and submerged lands, situated in the Pacific Ocean, adjacent to North Island and the strand connecting North Island with South Island Coronado,* lying between the line of the peninsula of San Diego, as shown on the plat accompanying the United States patent to the peninsula of San Diego dated June 11, 1869, and the low water mark in said Pacific ocean *and lying between the said line of the peninsula of San Diego and the pierhead line in the said*

Pacific ocean as the same may hereafter be established by the federal government, and lying westerly of the prolongation of the line crossing the said strand in the position and direction particularly described as follows: * * *"

By said Statute, as requested by the United States, the Director of Finance was authorized to convey to the United States of America, among other things, *submerged lands lying in the Pacific Ocean outside of and beyond any bay or harbor.*

3. Thereafter, on August 27, 1931, the United States, through its Navy Department, wrote to the Executive of the Department of Finance, State of California, furnishing him with information with respect to the legislation set forth in the preceding paragraph (2) hereof, and with a copy of the report of September 24, 1930, from the Commandant of the 11th Naval District to the Chief of Naval Operations reporting on the status of the tide and submerged lands in question, as above quoted.

4. Thereafter, on November 6, 1931, the Commandant of the 11th Naval District wrote to the Department of Finance, State of California, and advised that the Secretary of the Navy had wired said Commandant regarding the status of the tide and submerged lands around North Island as affected by the 1931 legislation above mentioned, said wire from said Secretary of the Navy being set forth in said letter of November 6, 1931 and reading as follows:

"0305 YOUR LETTER JUNE TWENTY-THIRD ACT OF ASSEMBLY APPROVED BY GOVERNOR MAY ELEVENTH AUTHORIZES AND EMPOWERS DEPARTMENT OF FINANCE TO CONVEY TO UNITED STATES TIDE AND SUBMERGED LANDS OF

NORTH ISLAND ON SUCH TERMS AND CONDITIONS AS APPEARD IN HIS JUDGMENT TO BE FOR THE BEST INTERESTS OF THE STATE OF CALIFORNIA PERIOD ASCERTAIN AND REPORT TO NAVY DEPARTMENT AT EARLIEST PRACTICABLE DATE EXACT NATURE OF TERMS AND CONDITIONS DEMANDED IN ORDER THAT APPROPRIATE STEPS MAY BE TAKEN TO SECURE NECESSARY AUTHORIZING LEGISLATION FOR CONGRESS 1100"

Said Commandant then requested the Department of Finance to furnish him, as soon as practicable, with information requested above by the Secretary of the Navy.

5. In response to said Commandant's letter of November 6, 1931 aforesaid, the Division of State Lands of the State of California wrote said Commandant on November 28, 1931, and advised that title to those tide and submerged lands on North Island would be conveyed to the United States Government by the State of California without cash consideration, subject to (i) the reservation contained in Article I, Section 25 of the California Constitution, reserving the right of the People to fish upon and from public lands of the state; and (ii) in the event North Island was no longer used for the purposes to which it is now devoted by the United States, the *title to said tide and submerged lands would then revert to the State of California.*

6. Thereafter, on October 7, 1932, said Commandant wrote the Department of Finance of the State of California and advised that authority was to be sought from the next session of Congress authorizing the United States to take advantage of the State's offer subject to the reservations outlined in

said letter of November 28, 1931. Said Commandant there further stated in part as follows:

> "The tide and submerged lands mentioned are very desirable for governmental use in connection with Army and Navy reservations on North Island and it is contemplated to take advantage of the State's offer as soon as authority can be obtained from the Congress to accept said lands on behalf of the United States. It is hoped that such authority may be obtained from the next session of Congress."

7. On March 9, 1934 the said Commandant wrote the Department of Finance of the State of California and advised that he was in receipt of a letter from the Secretary of the Navy dated March 2, 1934, stating the view of the Judge Advocate General of the Navy that acceptance of the tide and submerged lands as authorized by the California Legislature in said 1931 legislation, may legally be effected without the necessity of any further legislation from Congress. Said Commandant *requested that a deed be executed* by the State of California subject to the reservations enumerated in said letter of November 28, 1931, conveying the tide and submerged lands adjacent and contiguous to that portion of North Island under the jurisdiction of the Navy Department, as set forth in said Act of the legislature approved May 11, 1931. Said Commandant stated that such deed should provide for acceptance by the Secretary of the Navy on behalf of the United States and be forwarded to the said Commandant for acceptance before recording in the land records of San Diego County.

8. On May 21, 1934 the Division of Lands of the State of California wrote said Commandant trans-

mitting a deed to the United States executed by the Director of the Department of Finance of the State of California, stating that said deed transferred

> "to the United States the land in Spanish Bight in the Bay of San Diego, *and in the Pacific Ocean,* in the County of San Diego, State of California, described in Chapter 293, Statutes of California, 1931."

9. On June 5, 1934 said Commandant wrote the Department of Finance of the State of California and acknowledged receipt of said deed transmitted on May 21, 1934, as aforesaid, and advised that the deed had been referred to the United States Attorney at Los Angeles

> *"for investigation as to sufficiency of title,* after which said deed would be forwarded to the Navy Department in Washington."

10. On February 11, 1935, the United States Attorney at Los Angeles wrote the Director of Finance of the State of California stating that said deed dated May 21, 1934 had been delivered to his office for review and then said in part:

> "The Attorney General, in discussing this matter in correspondence, has said in part:
>
> > 'In a similar case where land was to be acquired from the State of New Jersey, the Attorney General approved the title on the certificate of the Land Commissioner, who relatively holds the same position as the Director of Finance of the State of California, that such lands had not been otherwise disposed of. It ought not to be a difficult matter to secure such a certificate in the present instance.'

"We will be pleased to receive from you some sort of certificate which you can prepare, so that we may formally pass the matter.

"The attorney general has called our attention to a statement in a letter to him from the Secretary of the Navy in which the Secretary has said: 'They [lands in question] constitute part of the area the title to which was transferred from the State of California to the City of San Diego by the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1357).'

'In reading the Act of May 1, 1911, at page 1357 of the statutes of that year, we find that certain lands passed to the City of San Diego under certain conditions set forth in said Act. I am wondering if it will be necessary to obtain a quitclaim deed from the City of San Diego."

The United States Attorney asked for information with respect to the possible title of the City of San Diego.

11. Said inquiry from the United States Attorney with respect to the legislative grants to the City of San Diego and the legislative grants to the United States authorized by the 1931 statute aforesaid, were reviewed by the Department of Finance with the City Attorney of the City of San Diego. It having been found that there was no conflict between said statutes, a certificate was prepared by the Division of State Lands of the Department of Finance of the State of California certifying that, other than the United States of America under said deed of May 21, 1934, no person or municipality ever acquired title to said lands from the State of California. Said certificate was forwarded on March 25, 1935 to the United States Attorney at Los Angeles.

12. On June 25, 1935 said Commandant wrote the Department of Finance of California and advised, among other things, that the deed dated May 21, 1934 had theretofore been referred to the United States Attorney at Los Angeles for investigation as to the sufficiency of the title and then stated that:

> "The Commandant has received a letter from the Secretary of the Navy, dated June 3, 1935, instructing him to have the deed recorded in the land records of San Diego, California, and also to inform the Department of Finance *of the Navy Department's acceptance of the deed.* Accordingly, the deed was recorded at 4 p. m. on June 12, 1935, in Book 409 at page 225 of the official records of San Diego County, California, and the Department of Finance is hereby informed of the Navy Department's acceptance of the deed."

13. Said deed dated May 21, 1934 from the State of California to the United States of America executed pursuant to said Act of May 11, 1931, recited among other things that the Department of Finance was authorized to convey to the United States of America, under said statute:

> "title in and to all tide and submerged lands (whether filled or unfilled) *held by said state by virtue of its sovereignty,* situate in the Bay of San Diego, in the Spanish Bight in the Bay of San Diego *and in the Pacific Ocean,* in the County of San Diego, State of California, adjacent to North Island and the strand connecting North Island with South Island Coronado, which said lands are hereinafter more particularly described. . . ."

and in sub-paragraph (c) of the granting clause of said deed dated May 21, 1934 the following parcel of land is there particularly described as follows:

> "(c) All tide *and submerged lands, situate in the Pacific Ocean,* adjacent to North Island and the strand connecting North Island with South Island, Coronado, lying between the line of the Peninsula of San Diego as shown on the plat accompanying the United States Patent of the Peninsula of San Diego dated June 11, 1869, *and the low water mark in said Pacific Ocean and lying between the said line of the Peninsula of San Diego and the pierhead line in the said Pacific Ocean as the same hereafter be established by the federal government,* and lying westerly of the prolongation of the line", etc.

Said deed contained two reservations, the second of which provided for a reverter of the title of the lands therein described to the State of California, said condition reading as follows:

> "2. In the event North Island . . . is no longer used by the United States of America for the purposes to which it is now devoted, the title to the hereinbefore described lands shall immediately revert to the State of California."

III.

In conformity with the policy of the United States Lighthouse Board, established by Congress to acquire title to sites for lighthouses, beacons and other aids to navigation, the Legislature of the State of California enacted a statute approved March 26, 1874 (Stats. 1873-1874, p. 621), providing for the conveyance to the United States of title to land, in tracts not exceeding ten acres each, be-

longing to the State of California and covered by navigable waters anywhere within the limits of the State for lighthouse, beacon or other aid to navigation sites and likewise ceding jurisdiction to the United States over such granted sites.

Said statute approved March 26, 1874, by the California Legislature provides, in Section 1 thereof, as follows:

> "Section 1. Whenever the United States desire to acquire title to land belonging to the State, and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same; *provided,* no single tract shall contain more than ten acres, and that the State shall retain concurrent jurisdiction so far that all process, civil or criminal, issuing under the authority of the State, may be executed by the proper officers thereof, upon any person or persons amenable to the same, within the limits of land so ceded, in like manner and to like effect as if this Act had never been passed."

In 1907, the Legislature of the State of California enacted a statute approved March 18, 1907 (Stats. 1907, p. 581), adding a new section to the California Political Code, being Section 35, providing for the conveyance to the United States of any tract of land not exceeding ten acres "belonging to the State and covered by navigable waters" for the site of a lighthouse, beacon or other aid

to navigation. Said Code Section provided that the United States should also have jurisdiction over any such conveyed tract.

The said Act approved March 26, 1874, was repealed by the 1937 Legislature, and said Section was reenacted by the Legislature in 1937 as a part of the California Harbor and Navigations Code, Section 10,000.

In the year 1943, said Section 35 of the Political Code was repealed and was reenacted as a part of the California Public Resources Code, Section 8301.

The United States, through its Treasury Department and Light-house Board, established by Act of Congress, carried on an active program about the year 1870 and thereafter, in soliciting the several states and obtaining from such states the passage of legislative enactments granting submerged lands, ceding jurisdiction thereover, and providing for the United States to obtain title to lands for lighthouse sites in the respective states. In the Annual Report of The United States Light-house Board to the Secretary of the Treasury, dated September 25, 1871 (Ex. Doc. No. 1507, 42nd Congress, 2nd Session (1872), page 505), it is reported as follows:

> "A circular letter from the Light-house Board of July 11, 1870, called for the names of such States in this district as had not passed, first, a general law ceding jurisdiction over land purchased by the United States from time to time for public uses; and, second, a general law providing for the acquirement of land by the United States in cases of disagreement with the owners. Letters were addressed to the secretaries of state of New Jersey, Vermont, Connecticut, Rhode Island, and New York, inquiring if these laws had been passed, and it was subsequently

learned that none of these States had passed such general laws, the custom being uniform to pass special acts for each case, where land was required. Subsequently *letters were addressed to the governors of Rhode Island, Connecticut, New Jersey, and New York asking the passage of these general laws,* and *the Engineer of the district personally urged their passage at the capitals of the States named.* Rhode Island passed the general law, and in addition a special act, *ceding the State's right over certain points in the navigable waters of the State.* New York adhered to its former custom, and only passed a special act to cover certain sites named in the acts, and limiting the quantity of land. It is not known if the other States in the districts have passed any acts. The passage of these acts by the States of New York and Rhode Island was delayed until late in the session of their legislatures, and the works appropriated for in the act of Congress of July 15, 1870, dependent upon the passage of these laws ceding jurisdiction, were consequently delayed until very near the close of the last fiscal year."

IV.

In the year 1941 the United States planned the construction of a national defense project on the Silver Strand south of Coronado and desired to locate such project on the ocean side of the Silver Strand and extending into the Pacific Ocean opposite its Military Reservation known as "Coronado Beach" hereinabove referred to. A request was thereupon made by the United States for a legislative grant of such tide and submerged lands by the State. In this connection defendant alleges:

1. In the spring of 1941 the United States War Department, Engineer's Office at Los Angeles pro-

posed an exchange between the United States and the State of California of the lands known as "United States Military Reservation, Coronado Beach" on the Strand lying between San Diego Bay and the Pacific Ocean, plus the area of submerged lands granted to the United States under the Act of March 9, 1897, pursuant to the map filed with the Surveyor General of the State of California, as hereinabove alleged; and that the State of California, through legislative action, grant to the United States an area of 32.8 acres of submerged lands lying in the Pacific Ocean on the oceanward side of said Coronado Beach Military Reservation.

2. On May 27, 1941 the United States of America, through its War Department, Engineer's Office, wrote to the State Lands Commission of the State of California requesting legislation permitting the exchange of lands by the State of California granting to the United States said 32.8 acre parcel of submerged lands in the Pacific Ocean, transmitted with said letter a map prepared by said War Department showing the location of the three parcels of land to be affected by such exchange and showing said 32.8 acre parcel to be conveyed to the United States as lying in the Pacific Ocean. Said letter stated in part that:

> "There is planned the construction of a national defense project on Silver Strand south of Coronado in San Diego County. It has been found feasible to locate this project on the ocean side of Silver Strand opposite the present Military Reservation known as 'Coronado Beach.'
>
> ". . . A tentative agreement has been reached in which the exchange of land can be

effected by and between the United States and the State of California (represented by the State Lands Commission and the State Parks Commission), which would give to the Government title to that land needed for this project, such title to cover lands adjacent to and contiguous to other state-owned land.

"This proposed plan is for the United States to convey to the State of California all property contained in the military reservation known as 'Coronado Beach' *in exchange for an equivalent area of state land on the ocean side of Silver Strand opposite said military reservation.*

"Reference is made to California Statutes . . . approved March 9, 1897, by which title to so-called tide and submerged lands adjacent to and contiguous to such lands of the United States as lie upon tidal waters, etc., and held for military purposes, reverts to the state whenever the United States' land is sold.

"It is noted that the legal description [shown on the map transmitted with said letter] of the military reservation identified as Parcel 3, defines an upland area only, *it being understood that under the provisions of the statute hereinabove mentioned title to tide and submerged lands passes to the state upon sale of the reservation.* However, in order to define the limits of an area on the ocean side equivalent to the area embraced within the total boundaries of the reservation on the Bay side, it was necessary to compute an area of combined tide lands and submerged lands based on the metes and bounds description in the statute hereinabove mentioned.

"The metes and bounds with computed areas are shown on the inclosed map and it is the

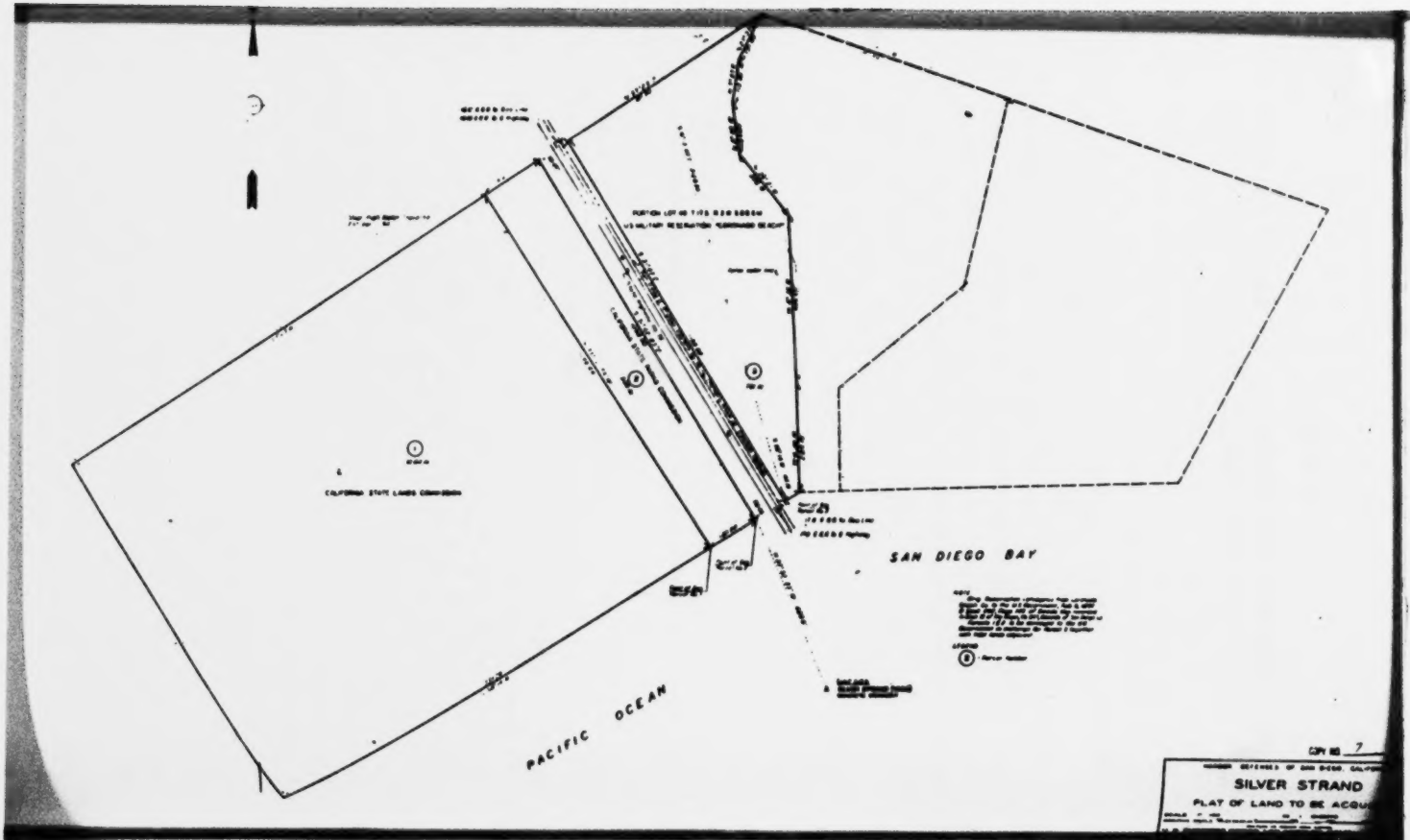
intention and purpose of the United States to convey to the state all right, title and interest it may now have in the military reservation, together with its adjacent and contiguous tidelands and submerged lands . . .

"Conveyance of Government land is made only by authority higher than this office, and request for such authority has been made and should be forthcoming soon. *It is also understood that conveyance of state land is made only by an Act of the State Legislature.*

"If this proposed plan is agreeable to you, *it is requested that same be approved and the necessary steps be taken to have the plan authorized by the Legislature, if possible, at its present session . . .*"

Said letter also requested that "pending final acquisition of state-owned land by the Government" permission be granted by the State to the United States of America to use and occupy the land for the same purposes as thereinabove in said letter mentioned.

A copy of the map prepared by the said War Department, accompanying said letter of May 27, 1941, depicting the 32.8 acre tract (Parcel 1 thereon) as lying entirely in the Pacific Ocean is set forth as follows:


SAN DIEGO BAY
PACIFIC OCEAN
SILVER STRAND

3. Pursuant to said request the Legislature of the State of California enacted a statute approved July 19, 1941 (Stats 1941, p. 3090) providing as follows:

"AN ACT *authorizing the State Lands Commission to transfer by deed or other instrument certain tidelands and submerged lands belonging to the State of California situate in or adjacent to the County of San Diego, State of California.*

"The people of the State of California do enact as follows:

"Section 1. The State Lands Commission is hereby authorized and empowered to transfer by deed to the United States of America all or a portion of those tidelands and submerged lands of the State of California lying southwesterly of that certain military reservation, known as 'Coronado Beach,' which reservation is a portion of Lot 40, T. 17 S., R. 3 W., S. B. B. & M., as described in deed dated February 9, 1897, recorded in Book 262 of Deeds, page 145, records of County of San Diego, and map of which is recorded in Book 18 of Maps, No. 837, Records of County of San Diego, upon such terms and conditions as may appear to the State Lands Commission to be in the public interest.

"Sec. 2. The State Lands Commission is likewise authorized and empowered to exchange all or a portion of the lands described in Section 1 hereof for other similar lands of the United States of America, upon such terms and conditions as may appear to the State Lands Commission to be in the public interest.

"Sec. 3. All such deeds or other instruments necessary to pass title to the United States Government shall be in the name and by the authority of the people of the State of California, and upon receipt of a resolution of the State Lands Commission approving such conveyance or other instrument, shall be executed by the Governor, countersigned by the Secretary of State, sealed with the great seal of the State, and delivered to an authorized agent of the United States of America. The Governor is likewise empowered to accept for and in behalf of the State of California a deed or other instrument transferring tidelands and submerged lands from the United States of America upon receipt of a resolution of the State Lands Commission that the requirements herein contained have been satisfied."

4. Pursuant to request of the United States for temporary use of said 32.8 acre parcel, pending the effective date of said legislative enactment, the State Lands Commission on July 25, 1941 granted authority for the issuance of an easement to the United States covering said property, and by letter dated July 30, 1941, addressed to District Engineer, United States War Department, at Los Angeles, advised the United States thereof. On August 5, 1941 the State Land Commission forwarded a proposed written easement covering said lands.

On August 22, 1941 the District Engineer of the War Department at Los Angeles wrote to the State Lands Commission, acknowledged receipt of the pro-

posed form of easement, and advised that "owing to the time element higher authority has decided to forego for the present making this exchange. It has been decided to construct this project on the Military Reservation located on the Bay Side of Silver Strand."

V.

By Act of August 5, 1886, Congress appropriated $600,000 for the improvement of the bar separating the Pacific Ocean from Humboldt Bay, California, and provided that none of the money thereby appropriated should be expended until the United States had obtained a title, free of expense, to the South Spit at the entrance of Humboldt Bay. Approximately 24.25 acres of tide and submerged lands lying in the Pacific Ocean at the entrance to Humboldt Bay owned by the State of California were thus required by the Act of Congress to be conveyed to the United States. The War Department requested the State of California to convey said tide and submerged lands situated in the Pacific Ocean at the entrance to Humboldt Bay in order to construct a breakwater and otherwise make improvements to the entrance to Humboldt Bay.

1. Pursuant to the request of the War Department, the Legislature of the State of California enacted a statute approved March 9, 1887 (Stats. 1887, p. 59) thereby granting to the United States an area of 24.25 acres of tide and submerged lands covered by the navigable waters of the Pacific Ocean at the entrance of Humboldt Bay adjoining said South Spit.

2. It was shortly thereafter determined that the description contained in the Act of the Legislature of March 9, 1887, was defective to convey to the United States title

to the 24.25 acre tract. The Chief of Engineers so reported to the Congress (1887 Annual Report, Chief of Engineers, U. S. Army, Part 3, pp. 2447-48) saying that:

> "During September last I was notified that an arrangement had been made with the owners by those interested in the work, and requested to define by metes and bounds the tracts which would be necessary for our purpose. An assistant was accordingly sent to Humboldt Bay, who, having been appointed a deputy United States Surveyor, made careful plats, connected with the land-office surveys of the land required above high water mark and the tide-lands adjoining *the title to which was vested in the State of California.* . . .
>
> "Only during the past week was I furnished with an abstract of title completed to date, which has been submitted to the district attorney for examination, who, satisfied with the title, will prepare a form of deed for the approval of the Attorney-General.
>
> "At the last session of the State legislature an act was passed with the intention of conveying to the United States a title to the tide-lands as described in the plat of survey by metes and bounds furnished from this office. By an unfortunate clerical error this description by metes and bounds was erroneously copied in the law and the patent, so that it does not describe any tract of land whatever, and effects, it is believed, no conveyance.
>
> "Since this discovery a proposition has been made that an application to the State for this tide land be made by some citizen who, on securing title, will reconvey to the United States; but the district attorney seems of the opinion that in view of the obvious intention of the legislature to dispose of the land in question no sufficient title to it could be obtained by private parties in advance of further legislative action.

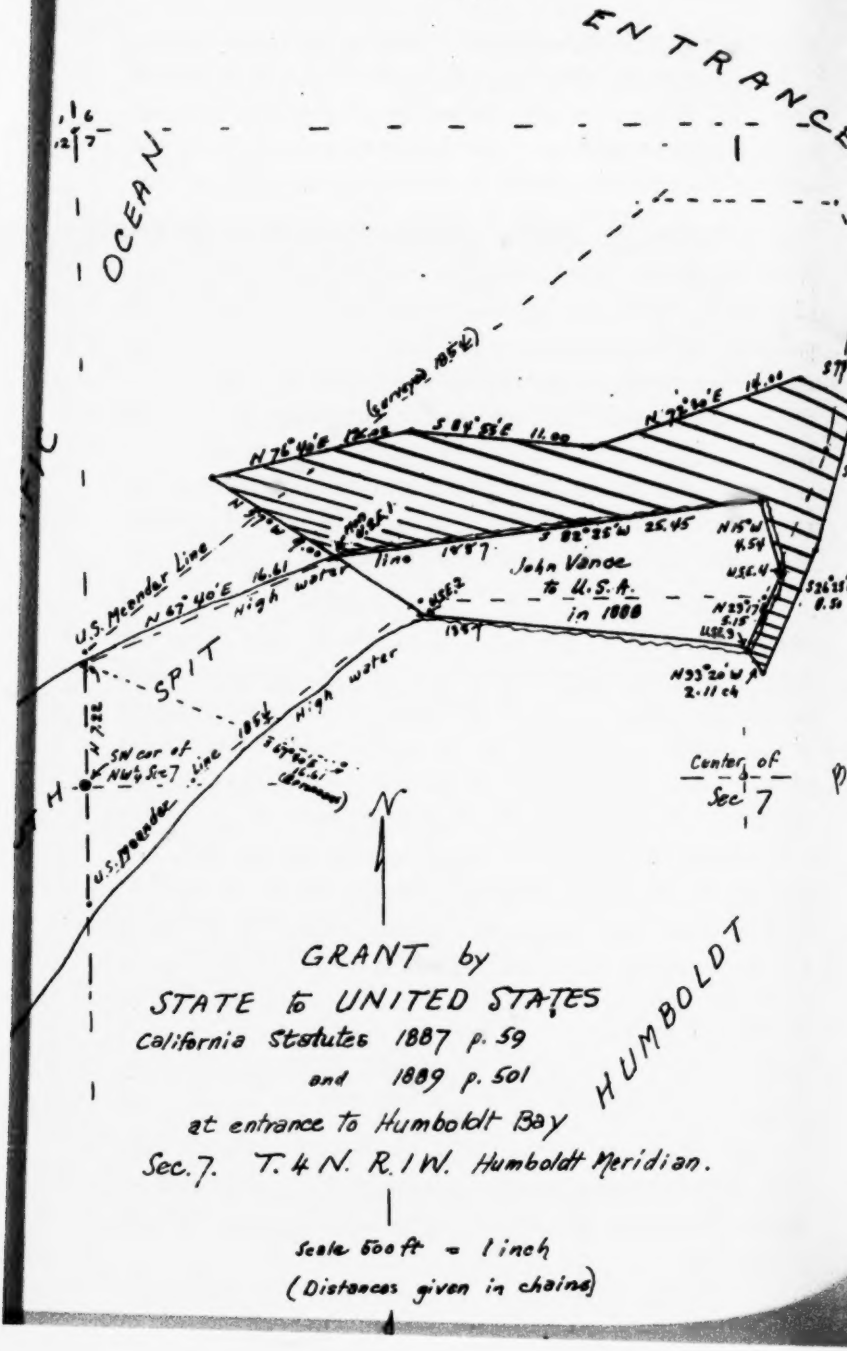
"If this be the correct opinion there seems no way in which the requirements of the act of August 5, 1886, for a clear title as preliminary to any expenditure can be satisfied until the next session of the State legislature has rectified the error of the existing law."

3. Pursuant to further requests from the War Department, the Legislature of the State of California enacted another statute, approved March 15, 1889 (Stats. 1889, p. 201), thereby granting said 24.25 acre tract of tide and submerged lands in the Pacific Ocean at the entrance of Humboldt Bay, for the purpose of enabling the United States to construct such breakwater and improve the entrance to Humboldt Bay. Said statute contained a corrected description covering the tract of tide and submerged lands thus requested by the United States.

4. Pursuant to said Act of the Legislature, approved March 15, 1889, as aforesaid, the United States Attorney General rendered his opinion that the United States had thereby acquired title to the land required on and adjacent to the South Spit in accordance with the Act of Congress of August 5, 1886. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 4, p. 2490.)

5. Thereafter the War Department caused the proposed breakwater to be constructed into the Pacific Ocean extending northwesterly several thousand feet from the shore line of the Pacific Ocean and thereby went into possession of the lands thus conveyed by the State of California to the United States at the entrance to Humboldt Bay, as aforesaid. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 1, pp. 351-352.)

6. A diagram depicting said 24.25 acre tract of tidelands and submerged lands thus granted by the State of California to the United States is set forth as follows:


ENTRANCE
OCEAN
PACIFIC
N 76° 40' E 18.00
S 84° 52' E 11.00
N 72° 40' E 14.00
(original 1854)
S 82° 25' W 25.45
N 15° W 4.54
John Vance to U.S.A. in 1888
U.S.M.2
U.S.M.3
U.S.M.4
N 23° 30' W 5.15
N 33° 20' W 2.11 ch
U.S. Meander Line
N 67° 40' E 16.61
High water
SPIT
1854
1887
SW cor of NW¼ Sec 7
Line
U.S. Meander
Center of Sec 7
N
HUMBOLDT
GRANT by
STATE to UNITED STATES
California Statutes 1887 p. 59
and 1889 p. 501
at entrance to Humboldt Bay
Sec. 7. T. 4 N. R. 1 W. Humboldt Meridian.
Scale 600 ft = 1 inch
(Distances given in chains)

VI.

In the year of 1941 the legislature of the State of California, pursuant to the request and solicitation of the United States through its Lighthouse Service, Department of Commerce, granted to the United States an easement for lighthouse purposes over certain filled tidelands in the Pacific Ocean in Ventura County, California, adjacent to and seaward of the United States Coastguard Reservation on which is located Point Hueneme Lighthouse. In this connection defendant alleges that:

1. On June 16, 1939 the Division of State Lands, Department of Finance, State of California, received a communication from the Department of Commerce, Lighthouse Service, relative to Point Hueneme Lighthouse Reservation, advising that instructions had been received from the Bureau of Lighthouses to

> "take up direct with the proper state officials the matter of obtaining authorization for the *deeding to the Government of any accreted lands fronting on said reservation.* The exact procedure to be followed in this case is not clearly understood by this office and information is requested as to the steps to be taken in order to have a bill introduced in the state legislature which would, if enacted, deed the accreted lands to the United States Government."

Pursant thereto the State Division of Lands placed said request for a legislative grant on its legislative file and presented the matter at the 1941 legislature of the State of California.

2. Pursuant to said request, the Legislature of the State of California enacted a statute approved May

19, 1941 (Stats. 1941, p. 1453), thereby granting an easement for lighthouse purposes to the United States of America over those certain filled tidelands adjacent to and seaward of the United States Coastguard Reservation on which is located said Point Hueneme Lighthouse, within an area bounded as follows:

> "On the North, that portion of the ordinary high water mark of the Pacific Ocean coincident with the South boundary of the said United States Coastguard Reservation; on the South, the day to day line of ordinary high water mark of the Pacific Ocean; on the West," etc.

VII.

Pursuant to request of parties acting under contract with the United States to construct improvements for the United States, the State of California has granted to such contractors for and on behalf of the United States easements and licenses to use tide and submerged lands in the Pacific Ocean owned by the State of California. In this connection, defendant alleges:

1. Columbia Construction Company easement:

(a) In the year 1941, Columbia Construction Company, a corporation, was under contract No. W-509-Eng.-1381 with the United States of America, War Department, to construct 13,350 linear feet of breakwater and to restore 12,500 feet of existing breakwater in the Pacific Ocean and the Bay of San Pedro enclosing the Los Angeles and Long Beach Outer Harbors. Under the terms of said contract, said corporation was obligated to procure, transport and fix in place rock and boulders in the con-

struction and restoration of said breakwater; and was also required to obtain and remove said material from Santa Catalina Island, situated in the County of Los Angeles, State of California.

(b) On August 28, 1941, Columbia Construction Company, pursuant to said contract with and behalf of the United States, made written application to the State of California, through its State Lands Commission, for permission to erect and maintain a dock 100 feet into the waters of the Pacific Ocean off Catalina Island approximately one mile southeast of the City of Avalon. In said application, it is stated that:

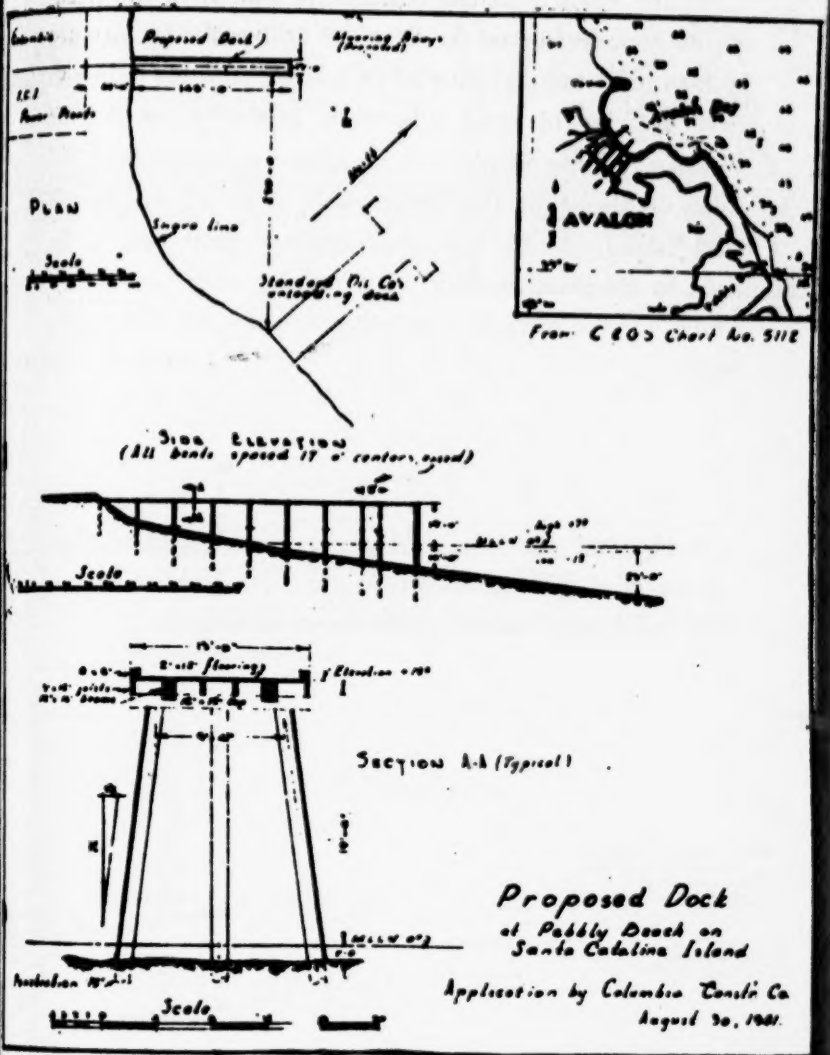
> "By instruction of the United States Engineer Division, we are hereby asking permission to drive a treated pile dock one hundred (100) feet into the water off Catalina Island. The location of the pile dock is to be one mile southeast of the City of Avalon, in the vicinity of Wrigley's old pottery plant. The dock is to be used in connection with our work of restoring and building the San Pedro breakwater. We have permission of the land owner, Santa Catalina Island Co., and would appreciate action on this at your earliest convenience."

By supplemental application dated August 30, 1941, said corporation applied to the State of California, State Lands Commission, for permission to construct and maintain an oil unloading dock

> "to be constructed at Pebbly Beach, Catalina Island, Los Angeles County, State of California. This location is outside of the unincorporated town of Ava-

lon. Santa Catalina Island Co. is owner of this land, and we have their permission to construct said dock. Plans and specifications of the proposed structure are covered fully in the attached map. . . . It is desired to use this loading dock indefinitely. This dock is to be used in conjunction with a contract which we have lawfuly been awarded and entered into with the United States of America, dated April 1, 1941, No. W-509-Eng.-1381, under the terms of which we are, as contractor, to construct 13,350 feet of composite type detached breakwater and to restore 12,500 feet of presently existing detached breakwater at Los Angeles, California."

The plan and design of the proposed dock at Pebbly Beach on Santa Catalina Island prepared by Columbia Construction Company and forwarded to said State Lands Commission, as aforesaid, is set forth as follows:

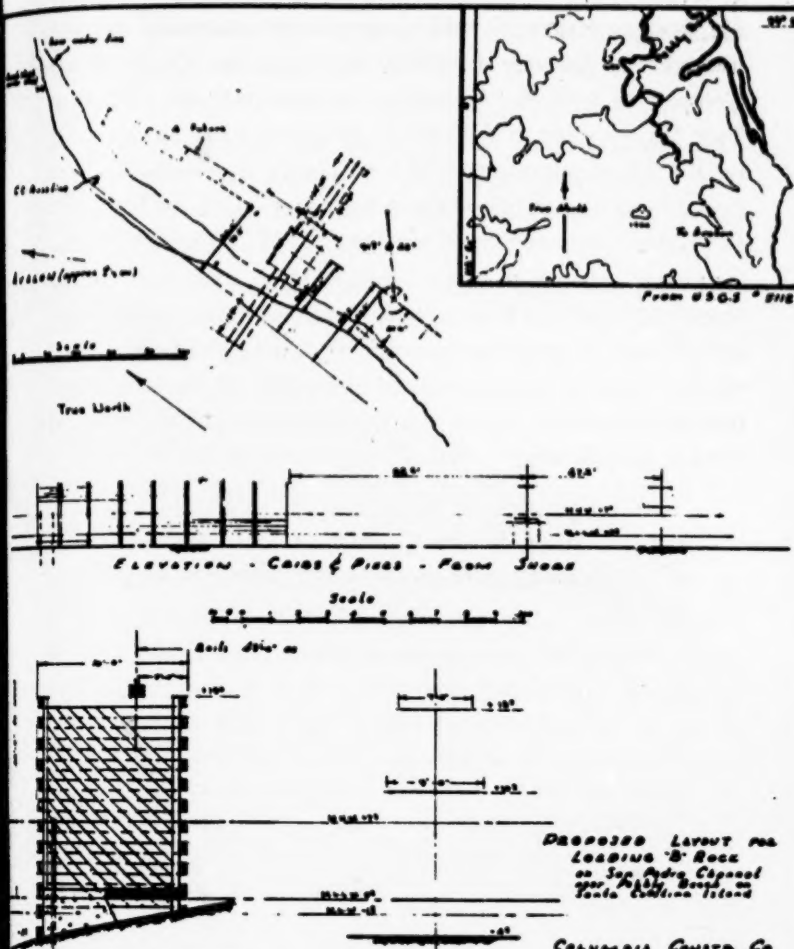


Proposed Dock
at Pebbly Beach on
Santa Catalina Island

Application by Columbia Construction Co.
August 30, 1921.

(c) On October 2, 1941, said Columbia Construction Company made a second written application to the State Lands Commission of the State of California for permission to construct and maintain a loading rock plant on and over certain tide and submerged lands in the Pacific Ocean adjoining Santa Catalina Island approximately 2⅓ miles southeast of the incorporated town of Avalon on said Island, stating that the proposed plant was to be used in conjunction with said contract with the United States for the construction and restoration of said breakwater.

A plat and sketch of said proposed rock loading plant accompanied said application to the State Lands Commission and a copy thereof is set forth as follows:


From U.S.C.S. # 5118
Tree North
Scale
Elevation - Cribs & Piers - Proposed Jetties
Proposed Layout for Loading "B" Rock on San Pedro Channel near Point Bonita on Santa Catalina Island
Columbia Quarry Co
October 3, 1921
Crib Section for Cantilever Crane
Elevation - Pier
One of 3 for cliff-hoy dumps
Scale

(d) Pursuant to said application of August 28 and 30, 1941, the State Lands Commission of the State of California, by resolution of said Commission, executed and delivered, on January 8, 1942, to Columbia Construction Company a written "Easement to Construct and Maintain Pier No. 42 (Sec. 675 P. C.)." Said easement was granted by the State pursuant to the authority contained in Section 675 of the Political Code for a period of twelve years from the sixth day of November, 1941. The consideration therefor was the sum of $144 upon execution of the agreement and $144 on or before the sixth day of November of each year thereafter during the term of said easement. Said easement granted the right to construct and maintain the pier upon and over certain lands described therein as follows:

> "Upon and over those certain tidelands and submerged lands in the County of Los Angeles, State of California, more particularly described as follows, to wit:
>
> "All that portion of a strip of land 200 feet in width containing one acre, more or less, lying seaward of the ordinary high water mark of the Pacific Ocean on the Island of Santa Catalina, the boundaries of which strip lie 100 feet on either side of the following described center line. [Then describing a center line measured 217.8 feet into the Pacific Ocean from the line of ordinary high water mark.]"

(e) Likewise, the State Lands Commission of the State of California, pursuant to said second application, granted, on November 7, 1941, Columbia Construction Company, an "Easement to Construct and Maintain Rock Loading Plant No. 3" for a period of twelve years, for a consideration of $288 upon execution of said easement, and

further sums of $288 on or before the tenth day of November of each year thereafter during the term of the easement. Said easement was granted for the purpose of constructing and maintaining a rock loading plant upon lands therein described as follows:

> "Upon and over those certain tidelands and submerged lands in the County of Los Angeles, State of California, more particularly described as follows, to wit:
>
> "All that portion of a strip of land 435.6 feet in width containing two acres, more or less, lying seaward of the ordinary high water mark of the Pacific Ocean on the Island of Santa Catalina, the boundaries of which strip lying 217.8 feet on either side of the following described center line. [Describing a center line extending 200 feet into the Pacific Ocean from the line of ordinary high water mark thereof.]"

(f) On February 13, 1942, the State Lands Commission of the State of California was given notice by the War Department of an application by Columbia Construction Company to construct the pier aforesaid. On February 13, 1942, the State Lands Commission of the State of California wrote the War Department in response thereto and advised that:

> "This is to inform you that Columbia Construction Company has obtained permission from this office for the construction and maintenance of a pier for rock loading plant *on state tidelands in the Pacific Ocean* at Pebbly Beach approximately 2⅓ miles southeast of Avalon, Santa Catalina Island."

Like notification was given by the State Lands Commission to said War Department of the permission it had theretofore granted to Columbia Construction Company

to construct and maintain said oil unloading dock on and over State-owned tide and submerged lands as aforesaid.

(g) On May 21, 1943, Columbia Construction Company made written request to the State Lands Commission of the State of California for permission to terminate said easements executed November 7, 1941, and January 8, 1942, as aforesaid, advising that the United States of America had terminated Contract No. W-509-Eng.-1381 on December 29, 1942, and, in view thereof, it had become necessary for said corporation under and pursuant to said contract with the United States to cancel all contractual obligations in connection therewith. For that reason, it became necessary to terminate said two easements. Pursuant thereto, the State of California granted said request to and did terminate said two easements.

2. Standard Oil Company easement:

(a) On April 23, 1943, Standard Oil Company of California, under contract with and as agent for Defense Plant Corporation, a corporation wholly owned by the United States of America, through its wholly-owned corporation, Reconstruction Finance Corporation, made written application to the State Lands Commission of the State of California for an easement to construct, maintain and operate, for a term of fifteen years, a 24 inch welded steel salt water return pipe line in the Pacific Ocean and Santa Monica Bay at El Segundo, Los Angeles County, California, as a part of a butadiene synthetic rubber plant and facility there being constructed for said Defense Plant Corporation and the United States of America; and delivered drawings depicting the location and specifications of said pipe line. Said application stated that

> "as it is contemplated that the proposed easement will be transferred to Defense Plant Corporation we

respectfully request that a provision permitting Standard Oil Company of California to do so be incorporated therein."

(b) On April 29, 1943 said application was granted by the State Lands Commission of the State of California and approval was given for the issuance of Easement No. 89 to Standard Oil Company of California for a right of way over tide and submerged lands of the State of California at El Segundo for the construction of said 24 inch salt water return pipe line at an annual rental of $44.40, for the period of construction, and operation of said butadiene plant by Standard Oil Company of California under contract with Defense Plant Corporation, said easement to terminate in the event Defense Plant Corporation is no longer owned by the Federal Government and in no event to exceed a fifteen year term.

Pursuant thereto, on April 29, 1943, said State Lands Commission executed said "Right of Way Easement for Salt Water Return Pipe Line—No. 89" and which in turn was executed by said Standard Oil Company of California, granting said right of way for said purposes:

"over and upon those certain tide and submerged lands located within the County of Los Angeles more particularly described as follows:

"A right of way 100 feet in width extending from the ordinary high water mark of the Pacific Ocean to a line 220 feet offshore and parallel with the ordinary high water mark, such right of way lying fifty feet on each side of the following described centerline: [describing a line beginning at a point on the ordinary high water mark of the Pacific Ocean and extending 220 feet westerly out into the Pacific Ocean]"

(c) Thereafter, on October 12, 1943, said Standard Oil Company of California wrote said State Lands Commission advising that the 24 inch salt water return line installed in the Pacific Ocean and Santa Monica Bay at El Segundo under said Easement No. 89 was completed August 11, 1943.

(d) Pursuant to said Easement Agreement, Standard Oil Company of California has delivered the rentals required thereunder to said State Lands Commission. Defendant is informed and believes and upon such information and belief alleges that Defense Plant Corporation and the United States of America have reimbursed and paid Standard Oil Company of California for all rental and expenses in connection with said Easement No. 89. Likewise defendant is informed and believes and upon such information and belief alleges that under the written agreement between Defense Plant Corporation, on behalf of the United States of America, the title, property, rights and interest therein acquired by Standard Oil Company of California, as agent for the Defense Plant Corporation, vested immediately in Defense Plant Corporation and in the United States of America; and that the title and rights obtained by Standard Oil Company of California under and pursuant to said Easement No. 89 from the State of California are deemed to be vested in Defense Plant Corporation and the United States of America, from and after the date of execution of said Easement No. 89, to-wit, April 29, 1943.

(e) The attorneys for Defense Plant Corporation received the said easement and passed their opinion on the title of the state and its grantee, as defendant is informed and believes and therefore alleges.

VIII.

The State of California upon the request and solicitation of the United States has made numerous grants to the United States of America of tide and submerged lands located in entrances to bays and in bays and harbors within the boundaries of the State over a period in excess of 90 years. Some of such grants are the following:

1. Custom House Grant:

(a) In the year 1850 Congress appropriated $100,000 for the establishment of a Custom House in the City of San Francisco. (9 Stats. 540.) In the year 1851 Congress made a further and additional appropriation of $300,000 for the acquisition, establishment and completion of said Custom House in the City of San Francisco. (9 Stats. 609.)

By Act of July 21, 1852 (10 Stats. 24), Congress enacted a statute providing in part as follows:

> "That the Secretary of the Treasury be, and he is hereby authorized to purchase for the United States a suitable piece of ground at a central point in the City of San Francisco, as a site for the erection of a custom-house heretofore authorized to be built . . . the sum of $40,000 is hereby appropriated; *Provided,* That if the said Secretary of the Treasury shall fail to obtain such ground on satisfactory terms, then the said sum or such portion thereof as may be necessary, may be expended in providing the proper foundations for said custom house on the site heretofore selected for the purchase."

In 1854 Congress made a further appropriation of $50,000 for the purchase by the United States of a site for

a Custom House at San Francisco, and appropriated an additional sum of $10,000 for the extinguishment of any claims which might arise in connection with that site. (10 Stats. p. 559.)

(b) In the year 1854 the State of California was requested by the United States of America to sell and convey to the latter title to certain tide and submerged lands in the City and County of San Francisco for said Custom House site. The site thus sought to be acquired was, on September 9, 1850 and continued to be until after the year 1852, as depicted on the map published in 1853 by the United States through its United States Coast Survey, below the line of mean high water of the Bay of San Francisco and then covered by the navigable waters of said Bay. (23 Bancroft's Works, p. 628 footnote.)

(c) Pursuant to such request of the United States, the Legislature of the State of California enacted a statute approved May 3, 1854, authorizing the Governor of the State of California to convey to the United States said site formerly covered by the navigable waters of the Bay of San Francisco. Said site was described in said Act of 1854 as being bounded on the North by Jackson Street, on the East by Battery Street, on the South by Washington Street and on the West by Sansome Street. Said statute provided that the value of the site should be ascertained by appraisers in the manner fixed in said statute, and that the site should be conveyed by the Governor of the State of California to the United States in consideration of the United States paying to the State of California in cash one-half of the appraised value as determined by said appraisers.

(d) Appraisers were duly appointed in accordance with that statute and determined the value of said custom house site at $300,000.

(e) On or about September 4, 1854 the Governor of the State of California executed and delivered a deed conveying said custom house block site to the United States of America in consideration of receiving in cash the sum of $150,000 paid by the United States. (Journal of the Assembly, 6th Session, 1855, pp. 26, 72.)

(f) There having been some question as to the validity of the grant of the United States Custom House site contained in said Act approved May 3, 1854 as aforesaid, the Legislature of the State of California enacted a further statute, approved March 30, 1868 (Stats. 1867-68, p. 687), authorizing and directing the Governor of the State of California, upon demand by the United States Attorney for California, to convey to the United States by good and sufficient deed, all the right, title and interest which the State of California then had or might thereafter acquire in and to said Custom House Site, described in statute as follows:

> "All that certain lot or block of land, *or beach and water property,* in the City of San Francisco, bounded on the North by Jackson Street, on the East by Battery Street, on the South by Washington Street, and on the West by Sansome Street, then the lot or block of land known as and called the Custom House Block; . . ."

(g) The Attorney General of the United States examined the title of the State of California to said tract of tide and submerged lands thus conveyed to the United States for a Custom House Site, and passed his opinion

thereon, as defendant is informed and believes and therefore alleges.

2. Mare Island Grant:

(a) In the year 1853 the United States of America was in process of acquiring all interests in and to the upland of Mare Island in San Francisco Bay, California. The Secretary of the Navy requested a title opinion from the United States Attorney General in connection therewith and also in connection with the title of the State of California as to the shores of Mare Island, and tide and submerged lands out to ship channel.

(b) On April 9, 1853 the Attorney General addressed an opinion to the Secretary of the Navy. In said opinion of the Attorney General, with respect to the title of the State of California in and to that portion of Mare Island below the line of mean high tide and adjacent and submerged lands, stated as follows:

> "Following up the suggestions and inquiry made by Mr. Cooley, I am satisfied that the *State of California may set up and probably maintain title as against the United States* to so much of Mare Island as is subject to overflow by water, whether tidal or otherwise, *that is, at least, to all below high water mark.*
>
> "In the first place, the Supreme Court has decided in the case of Pollard v. Hagan, 3 Howard 212, that the *shores* of *navigable waters,* and the *soils under them* were not granted by the Constitution to the United States, but were reserved to the states respectively, and *the new states have the same right, sovereignty and jurisdiction over this subject as the original states.* This decision has been recognized

and more than once reaffirmed by the Supreme Court. See Goodrich v. Kibbe, 9 Howard 471-477, and Doe v. Beebe, *et al.,* 13 Howard 25. It is immaterial, under these decisions, whether the general sovereignty of the United States, and their right of domain, come by treaty with a foreign power or otherwise. *In all cases, on the admission of any state into the Union the land of the shores below high water mark, passes to, and vests in that state by virtue of the Constitution.*

"In the second place, by act of Congress passed the 20th day of September, 1850, all the swamp and other overflowed lands in the State of Arkansas, made thereby unfit for cultivation are granted to said state, and the provisions of the Act are extended to and its benefits conferred upon each of the several states of the Union in which such swamp and other overflowed lands may be situated. The State of California had already, by Act of September 9, 1850, been admitted into the Union and is, of course, entitled to all uncultivated overflowed lands within its limits as against the United States. It seems to me, that *on one or both of these grounds,* the State of California *may lay claim to all that of Mare Island* which is now below high water mark, and which is just as necessary as the upland, Nay, more necessary for the purposes of a Navy Yard. It will not avail anything for the United States to acquire the upland, unless it may construct wharves and docks, which of course, must be situated on this very overflowed or tide water shore land. Nay, how can the United States enjoy the use of Mare Island as a Navy Depot *while its entire shore belongs to California* who's rights of property may shut up the Island against access of ships as effectually as if it were surrounded by a wall of granite . . .

"I recommend that therefore, as indespensible prerequisites to any lawful expenditures of public money on Mare Island:

* * * * * * * *

"*Secondly,* that the State of California be invited to relinquish to the United States whatever claim, if any, she may have, to the shores or overflowed lands of Mare Island."

(c) The Secretary of the Navy, on October 3, 1853, addressed a communication to the Governor of the State of California, enclosing a copy of said opinion of the Attorney General dated April 9, 1853. He there advised that Congress had made preparations with a view to establishing a Navy Yard at Mare Island; that under the existing law no improvement could be commenced on lands acquired by the United States until a favorable title opinion had been rendered by the United States Attorney General; and that in view of the Attorney General's opinion of April 9, 1843 aforesaid

"the law will not allow me to commence these works until some action on the part of said Legislature. I therefore request Your Excellency at your earliest practical convenience, to invite the attention of the Legislature to this subject in order *that proper acts may be passed ceding jurisdiction and relinquishing title to Mare Island.*"

(d) Pursuant thereto the Legislature of the State of California enacted a statute approved May 11, 1854 (Stats. 1854, p. 48), among other things, granting and conveying to the United States of America the title of the State of California in and to

"such portions of the Island . . . as are overflowed, beach, or swamp lands, on the Eastern shore

of the said Island, from the Southern point thereof to a parallel intersecting the Northern point of the highlands, and *extending into the waters of the bay or straits washing the Eastern shore of said highlands of the Island, to the ship channel . . .*"

3. Quarantine Station Grant:

(a) A site for a quarantine station in the Bay of San Diego was requested by the United States to be conveyed to it by the State of California.

(b) Pursuant to such request the Legislature of the State of California enacted a statute approved June 16, 1906 (Stats. 1906, p. 77) granting said request. Said statute provided in part as follows:

"Upon the enactment of proper legislation by Congress providing for the taking of the real property hereinabove described *belonging to the State of California,* situated in San Diego County, the Board of State Harbor Commissioners for the Bay of San Diego may, and is hereby authorized, to convey to the United States for quarantine purposes the title to, and cede to the United States Government jurisdiction over the following described tidelands in San Diego Bay: [particularly describing a parcel 1000 feet long and 600 feet wide of tide and submerged lands adjoining the main ship channel at the entrance to San Diego Bay]."

4. Naval Hospital Grant:

(a) A site for a naval hospital in the Bay of San Diego was requested by the United States of America

to be granted by the State of California and the City of San Diego.

(b) Legislation pursuant thereto was enacted by the State of California approved April 28, 1921 (Stats. 1921, p. 54), thereby granting to the United States of America a 17.04 acre parcel of tide and submerged lands to be held by the United States for the exclusive use of its Naval Department as a site for a Naval Hospital. Said statute recited that this 17.04 acre tract of tide and submerged lands is the same tract of land conveyed to the United States by that certain conveyance made by the City of San Diego dated September 3, 1919, which had been ratified, confirmed and approved by the electors of the City of San Diego voting at a special election held August 3, 1920.

5. Benicia Military Reservation Grant:

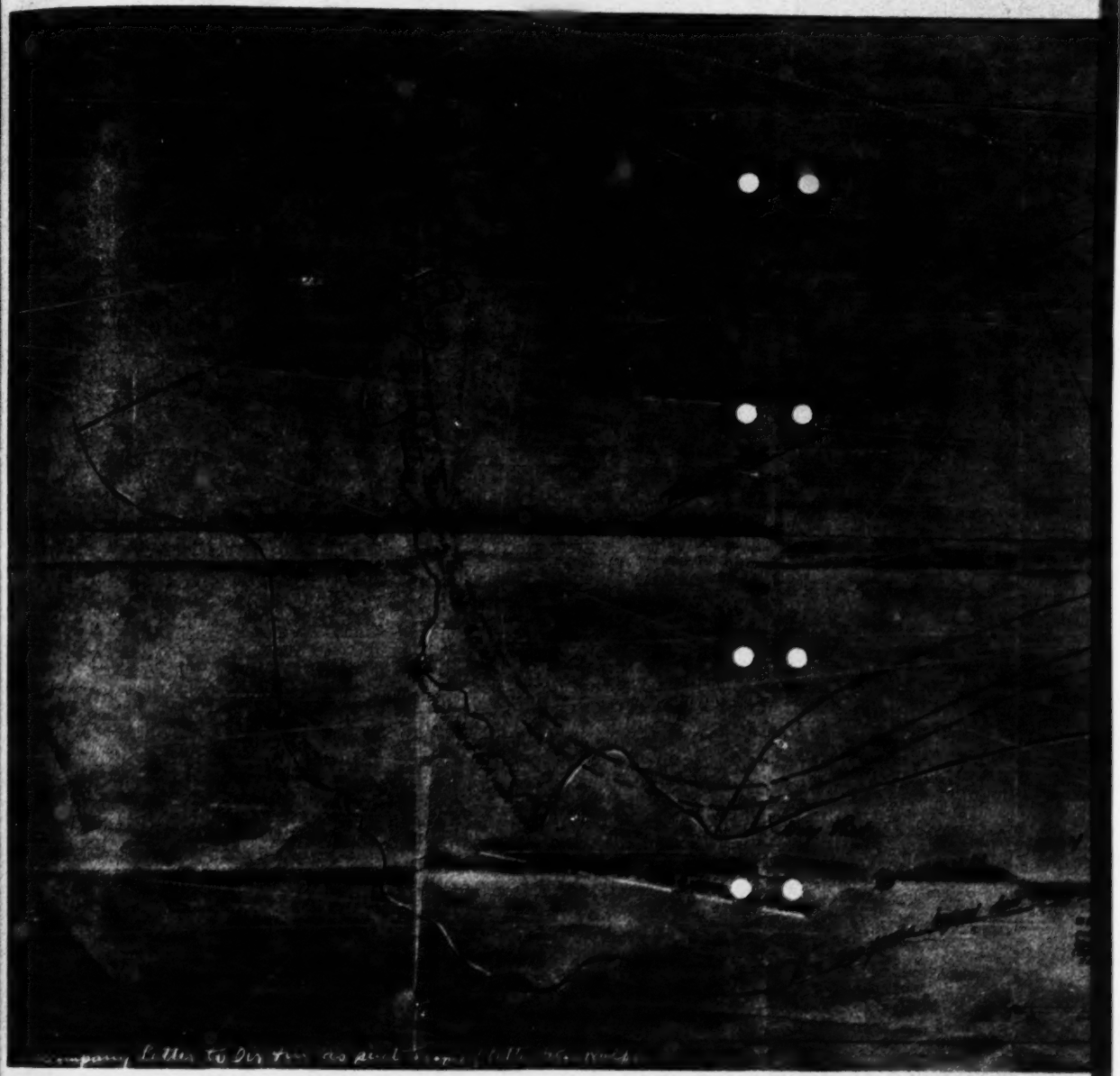
(a) A parcel of submerged land lying in front of the Benicia Military Reservation in San Francisco Bay was granted to the United States of America by the State of California in the year 1935. In this connection defendant alleges that:

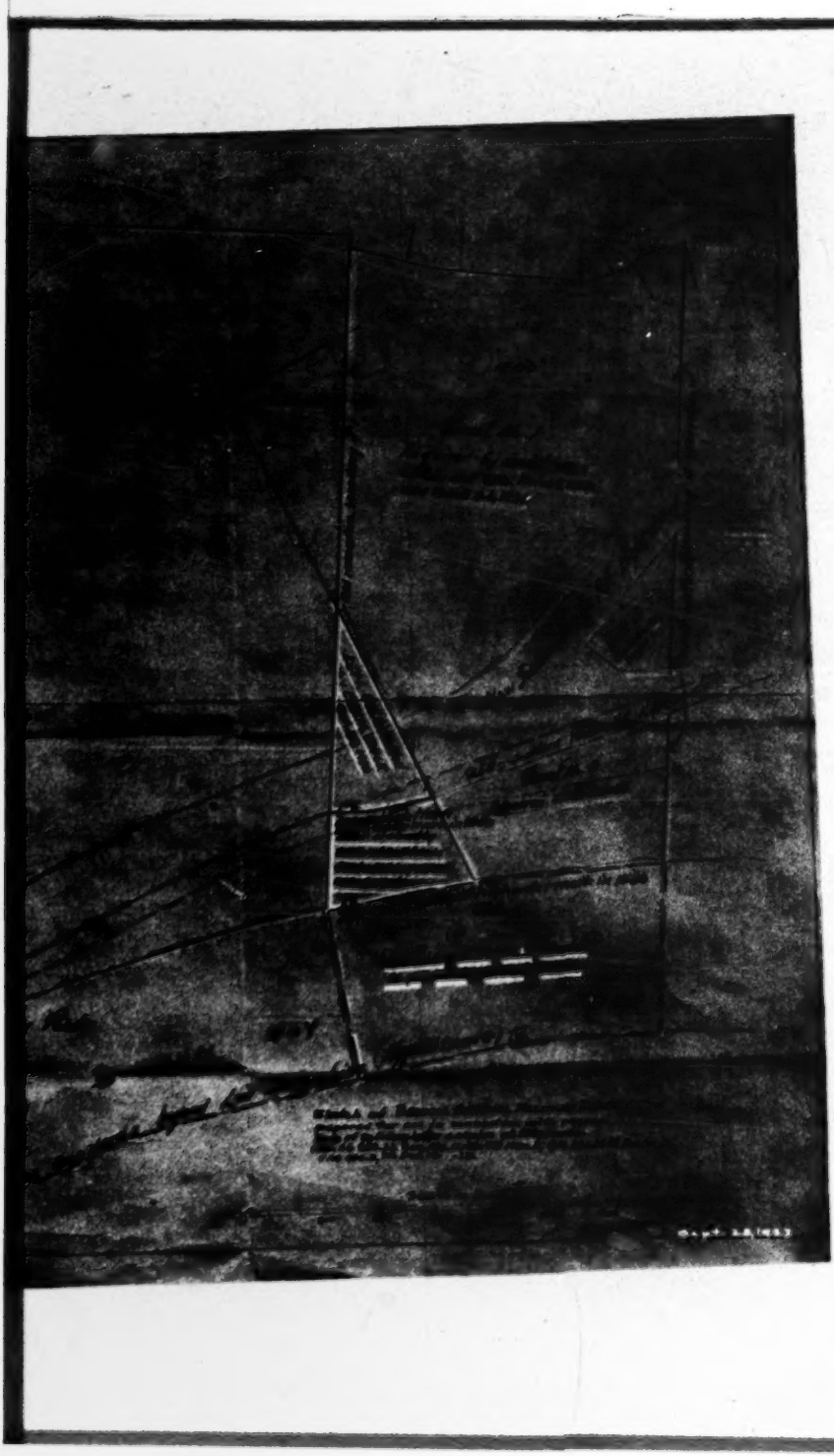
(b) On October 17, 1933 the United States Secretary of War addressed a communication to the Governor of the State of California advising of the addition of a small parcel of land to the Benicia Arsenal Military Reservation by Executive Order; and of a further addition to said Reservation of a parcel of land acquired from the Southern Pacific Company in 1929. The Secretary of War

there referred to an Act of the California Legislature, approved March 9, 1897, by which

> "all of the right, *title and interest of the State of California to the lands lying between high water mark and a line 300 yards beyond low water mark adjacent and contiguous to all the then reservation including Benicia Arsenal were ceded to the United States.* If such cession were now made by the State of California for the *submerged lands* in front of the lands referred to in the preceding paragraph it would round out the reservation . . .
>
> "It is therefore requested that the State of California cede to the United States: . . .
>
> > "(3) All of its right and title and exclusive jurisdiction over the lands between high water mark and a line 300 yards below low water mark lying adjacent and contiguous to the lands acquired from the Southern Pacific Railroad Company in 1929, and to the parcel of land lying in front of Lot 1, Section 6 described in section (2) above and between the northerly line of the *lands in the reservation ceded by the Act of March 9, 1897* and the present northerly line of the reservation prolonged easterly to an intersection with a line three hundred yards below low water mark."

A sketch showing the relation of the various parcels of land in question was enclosed with said letter of the Secretary of War and a copy of said sketch is attached hereto.





As a result of said request and further correspondence between the Secretary of War and the Governor of California and other officials of both governments, the Legislature of the State of California enacted a statute approved July 15, 1935 (Stats. 1935, p. 1672) conveying to the United States of America

> "the *title of the State of California* . . . in and to the parcel of land extending from high water mark out to the 300 yards below low water mark lying adjacent and contiguous to the lands acquired by the United States as an addition to Benicia military reservation by deeds from Southern Pacific Railroad Company and the Southern Pacific Company dated March 9, 1929 and March 26, 1931, and to the lands hereinabove described in front of Lot 1, Section 6 and between the northerly line of the *lands ceded as a part of that reservation by the Act of the Legislature of California approved March 9, 1897* . . . and the northerly boundary line of the present reservation prolonged easterly to the intersection with the line three hundred yards out beyond low water mark . . ."

B.

Grants by California Municipalities to the United States.

The State of California, over a period of the last forty years, has granted to the several coastal municipalities tide and submerged lands lying within their respective municipal boundaries, the grants to said municipalities including, in most instances, the submerged lands extending out three miles into the Pacific Ocean.

Said municipal grantees have been authorized by the State of California, both by general legislation and by special legislation, to grant to the United States portions of the tide and submerged lands within their municipal boundaries. Some of the statutes generally authorizing municipalities, to which the State of California has conveyed tide and submerged lands, to make grants thereof to the United States, are the following:

(a) By Act of the Legislature approved May 28, 1913 (Stats. 1913, p. 470) it is provided that:

> "Any municipal corporation to which tidelands and submerged lands situate within the boundaries thereof have been granted by the State of California is hereby authorized and empowered to grant portions of such lands to the United States, for purposes of the United States . . ."

provided that a majority of the electors of such municipality approve thereof.

(b) The Legislature enacted a statute, approved June 14, 1929 (Stats. 1929, p. 1691) authorizing any municipal corporation to which tide and submerged lands situate within the boundaries thereof

have been or may thereafter be granted by the State of California, to grant all or any portion of such tide and submerged lands to the United States for public or governmental purposes, including military or naval purposes of the United States, provided that no such grant shall be made unless authorized and approved by the vote of a majority of the electors of such municipality. Said statute confirmed, ratified and declared to be valid any grant theretofore made by any municipality to the United States of any portion of the tide or submerged lands situated within the boundaries of such municipal corporation authorized by vote of a majority of the electors of such municipality.

Numerous grants, leases, easements and other interests in and to tide and submerged lands, both under the coastal waters of California and in its bays, harbors, rivers and lakes, have been conveyed to the United States, pursuant to its request therefor, by the several municipal grantees of the State of California, some thereof being the following:

I.

City of Newport Beach.

The City of Newport Beach made grants to the United States of America of substantial portions of submerged lands in the Pacific Ocean located outside of any harbor or bay and did so at the specific instance and request of the United States. In this connection defendant alleges that:

1. The City of Newport Beach was granted all the tide and submerged lands within its municipal boundaries by the State of California by Act of the State Legis-

lature approved May 25, 1919 (Stats. 1919, p. 1011). Said Act grants

> ". . . all the right, title and interest of the State of California held by said State by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands within the present boundaries of said City, and situated below the line of mean high tide of the Pacific Ocean which border upon and are in front of the upland now owned by said City and such other upland as it may hereafter acquire."

to be held solely for the establishment and improvement and conducting of the harbor.

By Act of the Legislature of the State of California approved April 5, 1927 (Stats. 1927, p. 125), the State of California granted to the City of Newport Beach all the tide and submerged lands bordering upon, in and under Newport Bay not theretofore granted to said City nor to the County of Orange, for harbor purposes.

By Act of the Legislature of the State of California, approved April 20, 1929 (Stats. 1929, p. 274), the line of ordinary high tide of the Pacific Ocean was established and declared thereby defining the limits of the grant of tide and submerged lands made by the State of California to the City of Newport Beach, as aforesaid.

By Act of the Legislature of the State of California, approved June 15, 1929 (Stats. 1929, p. 1704), the State of California granted to the City of Newport Beach the title of the State of California in and to all the tide and submerged lands and filled lands bordering upon, in and under the Pacific Ocean situated below the line of mean high tide of the Pacific Ocean not theretofore granted

to said City nor to the County of Orange, for harbor purposes.

2. The City of Newport Beach is a municipal corporation of the sixth class of the State of California. In its Act of Incorporation under the Municipal Incorporation Act of the State of California, the westerly municipal boundaries of the City of Newport Beach are fixed as extending three miles into and along the Pacific Ocean and running from the southerly to the northerly boundary limits of said City along a line three miles westerly of the shore line of the Pacific Ocean.

3. The Chief of Engineers of the United States Army on September 25, 1933, made a written report to the Secretary of War recommending that the United States undertake certain improvements in connection with the entrance to Newport Bay and to said Bay by extending the jetties in the Pacific Ocean at the entrance of Newport Bay, by dredging an entrance channel 20 feet deep and 500 feet wide, by enlarging the main inner channels and turning basins to 20 foot depth with increased widths, and for other improvements, estimated to cost $1,835,000, of which $633,000 was for jetty construction work. Said Chief of Engineers recommended to the Secretary of War that such improvement be undertaken by the United States providing that (i) local interests would contribute half of the cost and (ii) the latter would furnish free of cost to the United States all necessary rights of way, and disposal areas for dredged material.

4. The Secretary of War transmitted to Congress said report of the Chief of Engineers recommending im-

provements to the entrance of and to Newport Bay pursuant to congressional authorization and appropriation.

5. The United States required the City of Newport Beach to furnish free of cost to the United States, in accordance with the recommendations of the Chief of Engineers, as aforesaid, and pursuant to authorization of Congress title to submerged lands to be used for the base of the jetties to be constructed in the Pacific Ocean at the entrance to Newport Harbor.

The War Department, through its District Engineer at Los Angeles, California, in January, 1934, designated the parcels of submerged lands required to be granted to the United States for the East Jetty and the West Jetty located in the Pacific Ocean at the entrance to Newport Harbor and of all sites for easements in connection therewith.

On February 9, 1934, the War Department, through its District Engineer at Los Angeles, wrote the City of Newport Beach and advised that it would be necessary for the City of Newport Beach to execute a warranty deed conveying to the United States the tracts of land for the East Jetty and the West Jetty. Said letter advised said City, with respect to the title to said tracts of land, as follows:

> "The United States Attorney General's Office has to approve the title and deeds before fulfillment of the law can be said to have been accomplished . . .
>
> "Evidences of title are required to be furnished under such rules and regulations as the U. S. Attorney General may direct, one of which is that a deed shall be prepared and 'submitted by the grantor for acceptance' on the part of the United States when the validity of the title is established.

"The office of the United States District Attorney in Los Angeles has the detailed legal procedure on file necessary to help your city (and county) attorney in drawing up all of the papers in the manner required by the U. S. Department of Justice. These requirements refer not only to the form of conveyance, but also to the proceedings which must be in accordance with city charter. There must also be submitted, in due form, proof as to validity of title and authority of grantor or grantors to so act.

"In connection with validity of title, an abstract is preferable. However, if this is too slow and costly, the U. S. Attorney General would probably be satisfied if the city would secure in lieu thereof, the following:

"(1) A certificate from the Surveyor General of the State to the effect that these particular parcels of land to be deeded had never been conveyed by the State prior to the conveyance to the city of Newport Beach;

"(2) A certificate from the City Clerk to the effect that said parcels of land had never been conveyed by the city and that there is no record of such conveyance in his office other than the one to the United States;

"(3) A certificate from the City Abstractor, *tracing the title from the State, through the city, to the United States, showing title clear of any claim, incumbrance or prior conveyance.*

"While delivery is essential, it is not complete until title proves good.

"A quit-claim deed to the existing jetties is also required."

The representative of the United States District Attorney's office in Los Angeles, the City Attorney of the

City of Newport Beach, and the City Engineer of the City of Newport Beach, conferred on April 29, 1934, regarding the method of conveying title to the United States as required by the Act of Congress. The City of Newport Beach, on May 2, 1934, advised the War Department, through its District Engineer at Los Angeles, of said conference and reported thereon in part as follows:

> "Mr. Powell [Deputy United States Attorney in Los Angeles] recommended in place of a quit-claim deed that the city give a warranty deed to all the right, title and interest to the east and west jetties, the warranty deed to include the right of extending the jetty. He thought that this method of conveyance would be more acceptable as the *State of California has conveyed to the City of Newport Beach certain rights to tidelands and submerged lands along the Ocean Front and from the City limits of Newport Beach extending three miles from the shore line.*"

6. In order to grant the tide and submerged lands to the United States as required by the Act of Congress, the City of Newport Beach was required to obtain authorization therefor from the qualified electors of said city at a special municipal election called for that purpose, in order to comply with the Acts of the California Legislature approved May 28, 1913 and June 14, 1929, above referred to.

Accordingly, the City of Newport Beach held a special municipal election on September 20, 1934 and submitted to the qualified electors of said city five Propositions involving the question of whether or not the five grants of tide and submerged lands therein described should

be made by the City of Newport Beach to the United States of America.

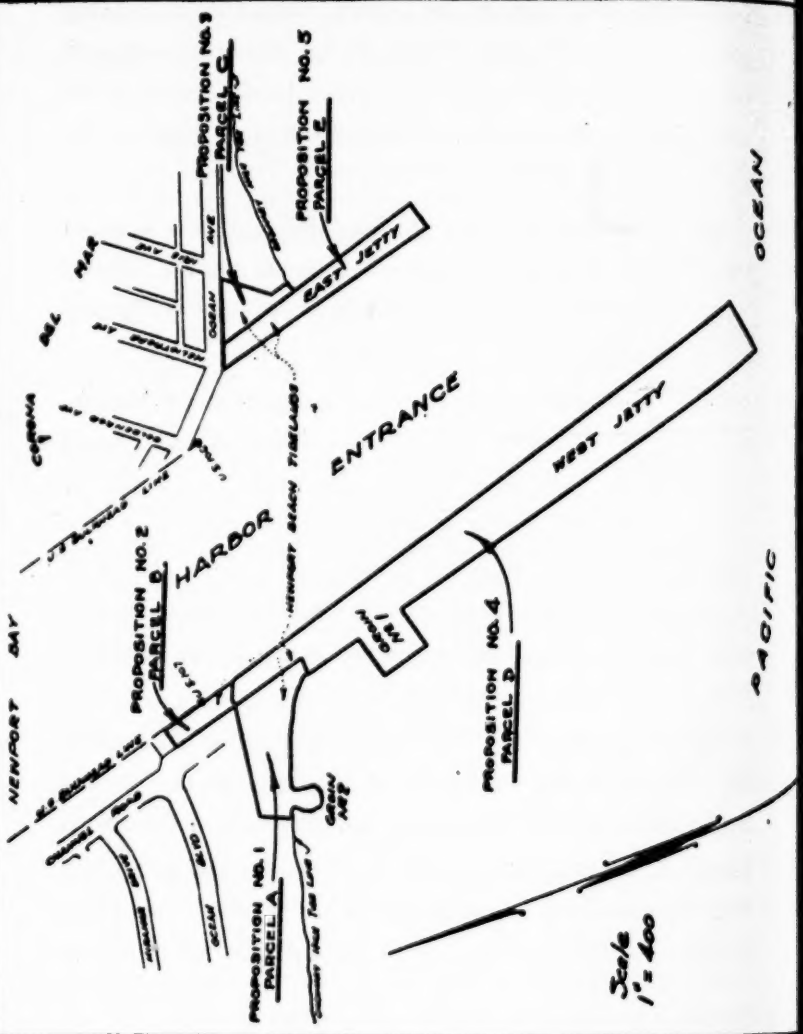
Propositions Nos. 1 and 2 thus submitted to said electors involved questions of whether or not the City of Newport Beach shall grant to the United States Parcel A, being approximately 1⅓ acres, and Parcel B, being approximately ⅓ acre of tide and submerged lands located at the shore end of West Jetty, including the rock groin at the shore end thereof.

Said Proposition No. 3 involved the question whether the City of Newport Beach shall grant to the United States Parcel C, being approximately one-half (½) acre of tide and submerged lands adjacent to East Jetty.

Said Proposition No. 4 involved the question of whether the City of Newport Beach shall grant to the United States those tide and submerged lands described in Parcel D thereof, being approximately 9 acres, and constituting the main part of West Jetty. Said Parcel D consists of a long narrow strip extending approximately 2000 feet into the Pacific Ocean, being about 190 feet wide.

Said Proposition No. 5 involved the question of whether the City of Newport Beach shall grant to the United States those tide or submerged lands described therein as Parcel E, being approximately 1 2/3 acres, and lying in a long narrow strip extending into the Pacific Ocean approximately 800 feet by approximately 100 feet in width.

A sketch showing the five parcels described as Parcels (A), (B), (C), (D) and (E) in the five Propositions submitted to the electors of the City of Newport Beach on September 20, 1934, is set forth as follows:



The electors of the City of Newport Beach voted in favor of each of said five Propositions and thereby authorized the City of Newport Beach to grant to the United States said five parcels of tide and submerged lands lying in the Pacific Ocean outside the entrance to Newport Bay Harbor.

7. The City Council of the City of Newport Beach, on September 20, 1934, adopted its five Resolutions Nos. 849, 850, 851, 852 and 853, reciting the results of said election of September 20, 1934, and resolving that the City of Newport Beach grant to the United States by warranty deed to be executed by the Mayor and City Clerk of said City, on behalf of said City, the real property particularly described in each of said resolutions, being the same property particularly described as Parcels (A), (B), (C), (D), and (E) in said five Propositions heretofore submitted to said electors, as aforesaid.

Pursuant thereto and under date of September 25, 1934, the City of Newport Beach executed five warranty deeds to the United States of America granting to the United States for public and governmental purposes, lands described as parcels (A), (B), (C), (D) and (E) as aforesaid. Said deeds were transmitted to the War Department through its District Engineer at Los Angeles under date of October 3, 1934, by the City of Newport Beach.

Said deeds were duly accepted by the United States of America through its War Department by duly record-

ing said five warranty deeds on March 5, 1935, with the County Recorder of Orange County; Parcel (A) deed being recorded in Book 740, Page 77, Official Records of said County; Parcel (B) deed being recorded in Book 739, Page 219, Official Records of said County; Parcel (C) deed being recorded in Book 741, Page 18, Official Records of said County; Parcel (D) deed being recorded in Book 738, Page 216, Official Records of said County; and Parcel (E) deed being recorded in Book 737, Page 316, Official Records of said County.

8. Each of said five warranty deeds thus accepted by the United States of America, as aforesaid, contained a covenant on the part of the City of Newport Beach that said City as grantor:

> ". . . is lawfully seized in fee simple of the above described premises; that it has a good right to convey; . . . and that said grantor and its assigns will forever warrant and defend all of said property so granted to the said grantee and its assigns against every person lawfully claiming the same."

9. The War Department through its Corps of Engineers, United States Army, under date of October 5, 1934, prepared three plats to be used as exhibits to said five warranty deeds.

(a) The first of said three plats bore File No. 815A-1 and bears the legend thereon reading:

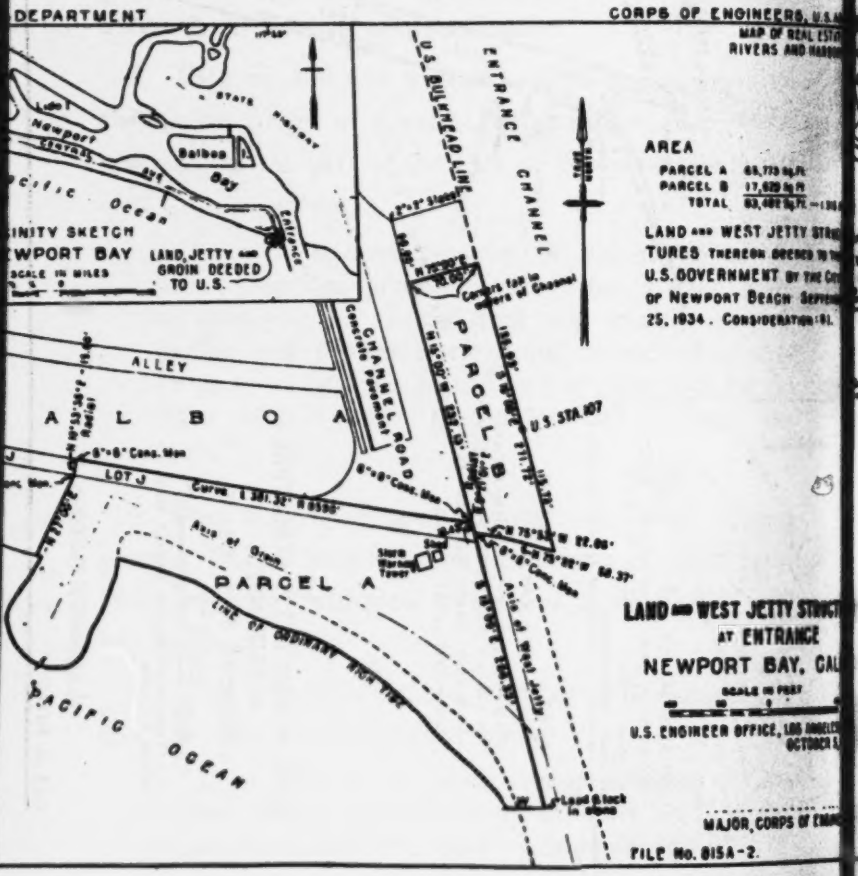
> "Land and West Jetty thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration: $1."

Said plat also contains a statement of the area contained in said grant of the site of West Jetty as being 8.361 acres. A copy of said plat is set forth as follows:

(b) The second of said three maps bears File No. 815A-2 and bears the legend:

> "Land and West Jetty structures thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration $1."

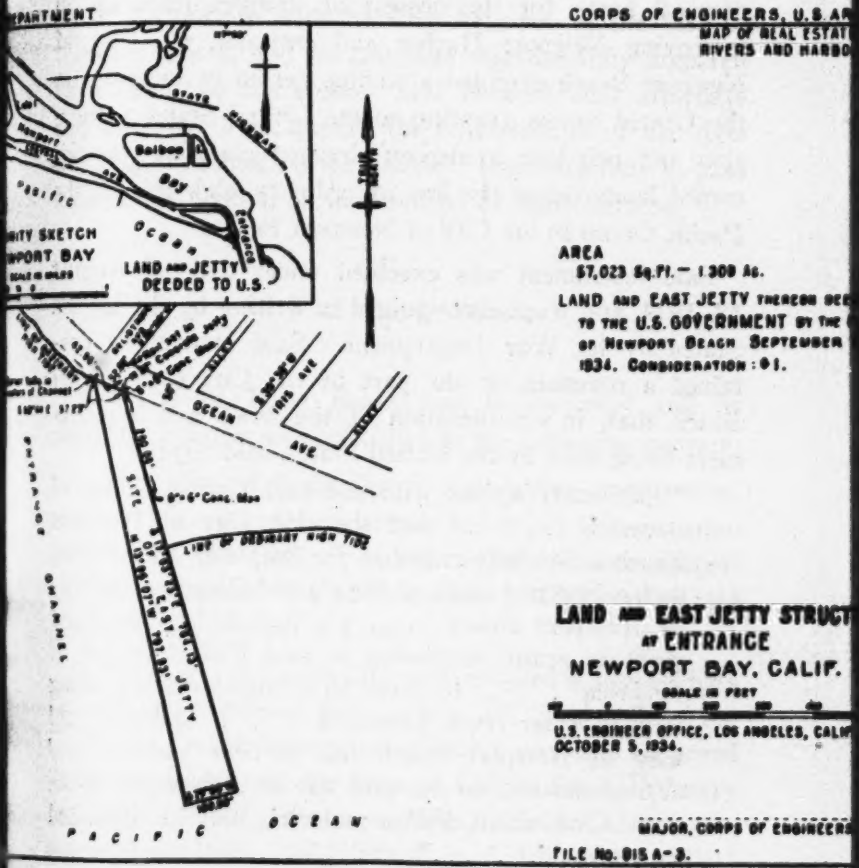
Said plat also contains a computation of the area of Parcels (A) and (B) shown thereon as containing a total of 1.915 acres. A copy of said plat is set forth as follows:



(c) The third of said three map plats is marked "File No. 815A-3" and bears the legend thereon:

"Land and East Jetty thereon deeded to the United States Government by the City of Newport Beach, September 25, 1934. Consideration $1."

Said map also contains a computation of the area of said site of the East Jetty as containing 1.309 acres. A copy of said plat is set forth as follows:



10. Said five warranty deeds, and the language thereof, were prepared by the United States Attorney at Los Angeles in conference with the City Attorney of said City in order to meet the requirements of the Act of Congress requiring a favorable opinion on title to property being acquired by the United States.

11. Pursuant to authorization from Congress and the Report of the Chief of Engineers, as aforesaid, requiring the United States to be furnished free of cost to it of disposal areas for the deposit of dredged materials in improving Newport Harbor and entrance, the City of Newport Beach executed a written permit or easement to the United States granting to the United States permission and privilege to deposit dredged materials on city owned lands below the line of ordinary high tide of the Pacific Ocean in the City of Newport Beach.

Said instrument was exectued under date of August 18, 1934, and was acknowledged in writing by the United States by its War Department. Said instrument contained a covenant on the part of the City of Newport Beach that, in consideration of the work and improvement being done by the United States, said city:

> "Specifically agrees with the said United States of America . . . that the said City of Newport Beach is *lawfully seized in fee simple of all tidelands and submerged lands of the Pacific Ocean in the City of Newport Beach* . . .; that it has the legal right to grant permission to said United States of America . . . to dump all dredge materials along its said water front, aforesaid . . . and that said City of Newport Beach *will forever warrant and defend the title to the said tide or submerged lands,* . . . on which dredge materials may be deposited as aforesaid, . . ."

Said instrument thereupon provided that:

> "It is further understood and agreed that upon the acceptance by the United States of Amerca of this permit, in writing, that the same shall be in full force and effect and be binding legal obligations of the City of Newport Beach."

Said permit-easement instrument was prepared with the assistance and cooperation of the United States Attorney at Los Angeles, representing the United States of America in conjunction with the City Attorney of the City of Newport Beach, and its language was carefully prepared as a result of conferences held between said attorneys and in order to accomplish the requirements of the Acts of Congress requiring the United States Attorney to pass a favorable opinion on instruments of that character.

II.

City of Long Beach.

(I)

The City of Long Beach was incorporated and its municipal boundaries established in the following manner:

1. The City of Long Beach, a municipal corporation, was first incorporated under the Municipal Incorporation Law in the year 1887; it was thereafter disincorporated; and again incorporated on December 6, 1897, under said Municipal Incorporation Law.

In the year 1907, said City duly adopted a Freeholder's Charter in accordance with Article XI, Section 8, of the California Constitution, which Charter was duly approved by the Legislature of the State of California on February 26, 1907. (1907 Stats., p. 1176.) Said Charter was amended in 1911 (1911 Stats., p. 1513), and in 1915

(1915 Stats., p. 1652). A new Charter was adopted by the City of Long Beach, approved by the California Legislature on April 14, 1921 (1921 Stats., p. 2054). Said Charter of 1921, as amended from time to time, is now in full force and effect.

By said Charter a Harbor Department was created under the management of the Board of Harbor Commissioners. By Section 225 of said Charter, as amended by the Legislature in 1925 (Stats. 1925, p. 1342), all navigable waters and all tide and submerged lands, filled or unfilled, situated below the line of mean high tide within the limits of the City of Long Beach and within its Harbor District, are placed in the possession and under the control of said Board of Harbor Commissioners.

By Section 229a of said Charter, it is declared that:

> "All tide lands and submerged lands within the harbor district, whether filled or unfilled, now owned or hereafter acquired by the City of Long Beach, are hereby declared to be required for use for purposes in connection with, or for the promotion and accommodation of commerce, navigation and fishery and shall, except as hereinafter provided continue to be withheld for such purposes. It shall be unlawful to grant, sell, convey, alienate, transfer, or otherwise dispose of, except as herein provided, any part of or any interest in the water front, tide lands, submerged lands, or appurtenances thereto belonging, owned, controlled, possessed or held by the City of Long Beach in the harbor district; provided that such grants of such land may be made to the State of California or to the United States of America for public purposes when authorized by a majority vote of the qualified voters of the City, voting upon the question of authorizing any such grant at an election."

Section 229 of said Charter authorizes said Board of Harbor Commissioners to grant franchises and permits to use the water frontage in the Harbor District for purposes connected with commerce, navigation and fishery for periods not exceeding 30 years and subject to specified conditions.

2. The southerly boundary of the City of Long Beach, as established by the original Acts of Incorporation of the City, and by the successive Charters, including the present Charter of said City, has continuously been fixed and established as extending three miles into the Pacific Ocean between the easterly and westerly boundaries of said City. The present Charter, in describing the boundary of the City, establishes the easterly boundary line of the City of Long Beach and proceeds with the description as:

> ". . . the prolongation thereof to a point three miles distant from the line of ordinary high tide of the Pacific Ocean; thence westerly and parallel to said line of ordinary high tide and three miles distant therefrom to the prolongation southerly"

of the westerly boundary line of the City of Long Beach on Terminal Island. (Stats. 1921, p. 2054.)

The easterly and westerly boundary lines of the City of Long Beach have been changed and altered from time to time until fixed and established as in the present Charter of said City.

(II)

The State of California made grants of tide and submerged lands to the City of Long Beach in the following manner:

1. On May 1, 1911, the State granted to the City of Long Beach all tide and submerged lands situated within the boundaries of said City, in trust for harbor and park purposes. (1911 Stats., page 1304.) Said legislative grant was amended by the 1925 Legislature (1925 Stats., page 235) and by the 1935 Legislature (1935 Stats., page 793).

2. Said grant of tide and submerged lands has heretofore and in the year 1938, been adjudicated by the Supreme Court of the State of California to have conveyed to the City of Long Beach the fee simple title to all tide and submerged lands within its city boundaries, including all oil and gas and other minerals lying in and under said tide and submerged lands, upon the trusts and conditions set forth in said statute, with the State of California reserving certain interests therein in the event of breach of the trusts or conditions set forth in said statute; and holding that the City of Long Beach has a right thereunder to extract oil and gas in and under said tide and submerged lands by and through operating agreements, and to own, hold and use the proceeds therefrom for harbor and park purposes in accordance with the Charter of the City of Long Beach. (*Marshall v. City of Long Beach* (1938), 11 Cal. (2d) 609, 82 P. (2d) 362). The California Supreme Court there held (p. 614), that:

> "It is established law that the state became the owner of tidelands in fee simple upon its admission into the union, holding them subject to the public trusts for navigation, commerce and fishing (*Shively*

v. Bowlby, 152 U. S. 1; *Borax Consolidated v. Los Angeles,* 296 U. S. 10); that it likewise became owner of the minerals therein (*Boone v. Kingsbury,* 206 Cal. 148, 170); and it should reasonably follow that it has the power to grant these lands to municipalities, subject to those same trusts."

(III)

The City of Long Beach constructed its Outer Harbor in the Pacific Ocean and Bay of San Pedro, and the United States of America actively participated therein, as follows:

1. In the year 1924 the City of Long Beach established a program for the construction of the Long Beach Outer Harbor to be located entirely seaward of the line of ordinary high tide along the ocean shore of the Harbor District of Long Beach. Said Harbor District was an area bounded on the east by the westerly line of the Los Angeles County Flood Control Channel and its prolongation into the Pacific Ocean, and on the west by the City of Long Beach boundary line on Terminal Island and its prolongation into the Pacific Ocean.

2. Said plan for the development of the Long Beach Outer Harbor, adopted in the year 1924 as aforesaid, was a part of a larger plan for the improvement, rearrangement and enlargement of the entire Long Beach Harbor, including its Inner Harbor, as well as its Outer Harbor; and also for the enlargement and improvement of the Connecting Channel (Cerritos Channel) between the Long Beach Inner Harbor and the Los Angeles Inner Harbor; and including the extension of the outer breakwater in the Pacific Ocean and the Bay of San Pedro.

3. An Inner Harbor at Long Beach had been developed mainly by private interests commencing in the year

1905, by the construction of (i) an Entrance Channel at the mouth of the Old San Gabriel River where it emptied into the Pacific Ocean and the Bay of San Pedro, (ii) a Turning Basin adjoining said Entrance Channel, (iii) Channels Nos. 1, 2 and 3 extending easterly and northerly from said Turning Basin, and (iv) a shallow Connecting Channel with the Inner Harbor of Los Angeles (then Wilmington).

4. This 1924 improvement project had been the subject of investigations and proceedings, not only by the people of the City of Long Beach and the City of Los Angeles, but also by the United States War Department, through its Secretary of War and Chief of Engineers, its Board of Engineers for Rivers and Harbors, its Division Engineer, and its District Engineer at Los Angeles.

5. On March 21, 1924, a hearing was held on the subject of said project by the United States Board of Engineers for Rivers and Harbors at Los Angeles, at which representatives of the cities of Long Beach and Los Angeles and others appeared and gave testimony, as contained in House Document No. 349, 68th Congress, First Session, pp. 52-92.

6. A written report on said subject was submitted to the Chief of Engineers of the United States Army, War Department, by the United States District Engineer at Los Angeles, California, on April 15. 1924, pursuant to instructions contained in the River and Harbor Act of Congress, approved September 22, 1922. Said report set forth the details of the proposed plan of improvement for the Long Beach and Los Angeles Inner and Outer Harbors. In this connection, said report considered the advisability of Congress appropriating funds for the extension of the Los Angeles Outer Harbor breakwater to pro-

tect the Long Beach Outer Harbor and entrance to its Inner Harbor. The District Engineer there set forth the estimated cost of extending the breakwater a distance of approximately three miles and recommended that, as the City of Long Beach would receive direct benefits resulting from the breakwater extension in the protection not only of its ocean Entrance, but also of reclaimed submerged areas along the ocean shore, it would be equitable for the City of Long Beach, as well as the City of Los Angeles, to be required to share in the cost of the construction of the breakwater extension. In stating the benefits to the City of Long Beach in the reclamation of submerged lands in its Outer Harbor, the District Engineer stated that the City of Long Beach would own the title to this reclaimed submerged land and stated what his estimate of the value of such lands of the City of Long Beach would be, reporting, in part (House Document No. 349, *supra*, pp. 46-47), that:

> "The City of Long Beach would receive protection for its ocean entrance and for large areas of valuable land that it could reclaim and *to which it would have title;* possible westward travel of silt to block its ocean entrance; and an eastern bulkhead would be formed by the breakwater, for land reclaimed east of the ocean entrance. . . . In the case of both Long Beach and Los Angeles, they would not have to resort to inland development at greater cost than for development in the outer harbor under protection of the breakwater. . . . Land on the south shore of Terminal Island can be reclaimed very cheaply, as incidental to dredging operations in the inner harbors. Between Fish Harbor

[on the ocean side of Terminal Island in the City of Los Angeles] and the silt diversion channel [being the easterly boundary of the Long Beach Outer Harbor District] under protection of the breakwater extension, *perhaps 1,000 acres could be so reclaimed. A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1,000 acres. Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.* That land would, of course, be valuable even without the breakwater protection; but its development by slips and piers on the ocean side would largely enhance its commercial value. For such development, however, a protecting breakwater would be needed."

7. The Chief of Engineers submitted to the Secretary of War, for transmission to Congress, the report of the District Engineer dated April 15, 1924. The Chief of Engineers there recommended to the Secretary of War and to the Congress that the Congress adopt the project for the improvement of the Long Beach and Los Angeles Inner and Outer Harbors and the extension of said breakwater, at a total estimated cost for the project of $17,000,000, of which the United States would be required to furnish $10,000,000 with nominal maintenance. The Chief of Engineers then recommended an initial appropriation by Congress of $2,000,000, and further recommended that if the City of Long Beach and the City of Los Angeles gave assurance that they would assume one-half of the initial cost estimated at $2,400,000, the breakwater would be built on the site recommended by the District Engineer.

The Chief of Engineers advised the Secretary of War and the Congress in his said report that:

> "Extension of the breakwater is considered desirable as a means of protection for terminals planned to be developed on the south side of Terminal Island, * * * the construction of piers in the outer harbor is a part of a plan prepared by local interests for comprehensive port development. * * * *The District Engineer believes that the local benefits which would result from the reclamation of land on Terminal Island,* under protection of the breakwater, make it proper for local interests to bear a large part of the cost of the breakwater construction." (House Document No. 349, *supra,* pp. 2-3.)

The Chief of Engineers then recommended to the Secretary of War and to Congress, in said Report, that the project of improvement be adopted by the United States through its Congress and appropriations therefor be made in accordance with the recommendations of the District Engineer, as aforesaid, upon certain conditions specified by the Chief of Engineers. The conditions recommended by the Chief of Engineers respecting the Long Beach Outer Harbor were that (i) the City of Long Beach and the City of Los Angeles contribute half of the cost of the breakwater, estimated at fourteen million dollars, with funds being made available by the cities annually in amounts equal to federal appropriations for the breakwater; and (ii) the City of Long Beach make provision satisfactory to the Chief of Engineers and the Secretary of War, before any federal funds are expended on the

breakwater, for the construction by Long Beach of terminal facilities in the Long Beach Outer Harbor east of the main Long Beach Entrance Channel, such terminal facilities to have a transshipment capacity of at least one million tons per year of general cargo. (House Document No. 349, *supra*, p. 4.)

8. By Act of March 3, 1925 (43 Stats., Ch. 467), Congress adopted the project as recommended by the Chief of Engineers, as aforesaid, for the improvements of the Inner and Outer Harbors of Los Angeles, which improvements were to be made under the direction of the Secretary of War and under the supervision of Chief of Engineers in cooperation with the Cities of Long Beach and Los Angeles. Said Act provided, in part:

> "* * * In accordance with the reports submitted in House Document Number 349, Sixty-Eighth Congress, First Session, and subject to the conditions set forth in said document: Provided, that the amount hereby authorized to be expended shall not exceed the sum of $6,500,000: Provided further, that the Secretary of War is hereby authorized to allow credits, in such amount as may be determined as equitable by the Chief of Engineers to local interests for such work as they may hereafter do in the construction of the breakwater if such work has been approved by the Chief of Engineers prior to its commencement and is in accordance with this project."

By such enactment, Congress adopted the Reports of the District Engineer and Chief of Engineers contained in said House Document Number 349, as aforesaid, and like-

wise adopted that portion thereof asserting and recognizing the title and ownership of the City of Long Beach in and to the reclaimed submerged lands on Terminal Island and in the Outer Harbor east of the Long Beach Entrance Channel as directly and positively stated by the District Engineer and Chief of Engineers in said Reports.

9. The map set forth next following, being a copy of the map prepared by the United States District Engineer at Los Angeles, accompanying his said Report of April 15, 1924, contained in said House Document No. 349, as aforesaid, illustrates the proposed improvements recommended to Congress in said House Document No. 349, as aforesaid, and particularly shows the proposed breakwater extension joining the shore at the "Silt Diversion Channel", being the then eastern extremity of the Long Beach Harbor District. This map also shows the boundary line of the westerly boundary of the City of Long Beach on Terminal Island, such line extending into the Pacific Ocean and Bay of San Pedro from the approximate middle of Terminal Island. The submerged lands proposed to be reclaimed from the Ocean, to which Long Beach was thus declared to be the owner, lie easterly of said boundary line on Terminal Island. These are the proposed reclaimed lands which the District Engineer and Chief of Engineers advised Congress in said Reports would be protected by the proposed breakwater extension and would benefit the owners thereof, to wit, the City of Long Beach and the City of Los Angeles, respectively. A copy of said map is as follows:

LOS ANGELES AND
LONG BEACH HARBORS
CALIFORNIA

10. In order to furnish the cooperation required from the City of Long Beach, by the Reports of the District Engineer and Chief of Engineers in House Document No. 349, as aforesaid, the City of Long Beach on May 8, 1924, held a special municipal election and obtained authority of its people to issue, and the City did thereupon issue, bonds in the amount of five million dollars ($5,000,000) for specified improvements in the Inner and Outer Harbors of the City of Long Beach. Said specified improvements included the construction of jetties and moving of existing jetties in the Outer Harbor; protection of the Long Beach Harbor Entrance and Outer Harbor through the breakwater extension; and the construction, completion and repair of docks, wharves, piers, landings, warehouses and other works necessary for the improvement of said Harbor. The City of Long Beach thereupon sold the bonds thus authorized and received from the sale thereof approximately five million dollars ($5,000,000). The total amount of said bond proceeds was disbursed and expended by the City of Long Beach in the several years following the issuance of said bonds exclusively for said harbor improvements, such expenditures being for rock work, dredging, reclamation of Terminal Island and elsewhere in the Outer Harbor, structures, and facilities.

11. The City of Long Beach submitted an application to the United States War Department for a permit to build the breakwater in conformity with the breakwater extension approved by Congress on March 3, 1925, as aforesaid. The City of Long Beach stated in said application that it was the owner of the submerged lands upon which said breakwater was to be erected. Said permit was granted by the War Department on March 7, 1925.

12. On March 10, 1925, the Chief of Engineers of the War Department directed the District Engineer at Los Angeles to notify the City of Long Beach that Congress had provided, as above quoted from the Act of March 3, 1925, that if the City of Long Beach wished to make a claim for credit, as provided in said Act of Congress, it must make formal request to that end in advance of the work and must further submit in advance a request for approval of Chief of Engineers of all plans, specifications and contracts covering the work for which credit would be claimed by the City. The City of Long Beach complied with these directions of the Chief of Engineers and furnished him with plans, specifications and contracts covering the construction work of said breakwater extension in advance thereof.

13. The City of Long Beach thereupon caused to be constructed at its own expense a 4,200 foot length of breakwater extending on a prolongation of the westerly line of "Silt Diversion Channel" from the shore approximately three-quarters of a mile into the Pacific Ocean and the Bay of San Pedro. The total cost to the City of Long Beach of such 4,200 foot length of breakwater was $906,-493. The City thereupon reported to the District Engineer that said breakwater had been completed in accordance with the terms of the War Department permit, and said District Engineer on October 11, 1928, so reported to the Chief of Engineers.

14. The foregoing detailed facts concerning the construction of said breakwater by the City of Long Beach were reported to the Committee on Rivers and Harbors of the House of Representatives of Congress in accordance with the Resolution of said Committee adopted on February 25, 1927, as quoted in House Document No. 33,

Seventy-first Congress, Second Session, pages 21-22. Said Committee Resolution directed the Board of Engineers for Rivers and Harbors of the War Department to review the Reports submitted in House Document No. 349, *supra*,

> "with a view to determining the advisability of modifying or waiving any of the conditions of local cooperations required as a precedent to the federal government's expending funds for the construction of the breakwater." (House Document No. 33, *supra*, page 11.)

Pursuant to said Committee Resolution, said Board of Engineers made its investigation and report and recommended to said Committee of Congress, which recommendation was approved by the Chief of Engineers in his Report to said Committee of Congress on April 11, 1930 that the requirement for the City of Long Beach and the City of Los Angeles to share half of the cost of construction of the breakwater extension should be waived in view of the cooperation already given by said cities. Said report and recommendation to said Committee of Congress stated in part:

> "While the Board believes that the original recommendation for breakwater construction was equitable, it states that the provisions of local cooperation which have already been carried out by the cities of Los Angeles and Long Beach may be considered sufficient to justify the United States in assuming the entire cost of the breakwater construction now proposed." (House Document No. 33, *supra*, page 3.)

15. By Act of July 3, 1930 (46 Stats., Chap. 847), Congress adopted the recommendations of said Board of Engineers and said Chief of Engineers contained in said Document No. 33 and thereby waived the conditions that

the City of Long Beach further share in the cost of the breakwater extension. Said Act of Congress in this respect provided in part that:

> "The modification of the existing project recommended in the reports submitted in * * * Rivers and Harbors Committee Document No. 33, Seventy-first Congress, Second Session, are hereby adopted and authorized subject to the condition set forth in the said documents."

16. In order to comply with the conditions specified in said House Document No. 349, the City of Long Beach constructed, in its Outer Harbor east of the main Long Beach Entrance Channel, terminal facilities having a cargo capacity of at least one million tons per year. Construction of such facilities was one of the conditions imposed by the Federal Government for the extension of said breakwater, as aforesaid. In this connection defendant alleges that:

(a) In the year 1928 the City of Long Beach held a special municipal election to obtain the authorization from its people to issue, and it thereafter did issue, bonds in the sum of approximately $2,700,000 for the purpose of obtaining proceeds to enlarge and complete the improvement and facilites in the Long Beach Outer Harbor. Pursuant thereto, said bonds were sold and proceeds in the sum of approximately $2,700,000 were received by the City.

(b) Said proceeds were disbursed in the several years following said election for the exclusive purpose of constructing Piers A and B in the Outer Harbor at a cost of approximately $1,350,000; for dredging a 35-foot depth channel in the Outer Harbor to connect with the Outer Harbor Entrance Channel

Fairway to the 35-foot depth of water in the Pacific Ocean and Bay of San Pedro; and for other harbor improvements.

(c) The foregoing expenditures of and improvement made by the City of Long Beach in its Outer Harbor were reported on September 30, 1929, by the District Engineer at Los Angeles to the Chief of Engineers, and by the Chief of Engineers to the Committee on Commerce of the United States Senate on April 11, 1930, as contained in Senate Document No. 130, Seventy-first Congress, Second Session, page 19, where it is stated that:

> "In February, 1929, the City of Long Beach entered into a contract for the construction of two overseas piers in the outer harbor. The improvement will provide three covered berths and one open wharf costing, when completed, approximately $2,130,000 * * *. The completion of these piers will be in compliance with condition (g) precedent to the extension of the existing Government breakwater to Long Beach. See page 4, House Document 349, Sixty-eighth Congress, First Session."

(d) From 1926 to 1930, the City of Long Beach dredged channels in the Outer Harbor to the 35-foot depth to afford deep draft approach to Piers A and B in its Outer Harbor. The materials obtained from such dredging were used to fill in and reclaim the submerged lands at Piers A and B and elsewhere in the Outer Harbor.

17. Congress was advised of these facilities improvements in the Outer Harbor in the report of the District Engineer to the Chief of Engineers, dated January 16, 1930, and by the Chief of Engineers reported to the Committee on Commerce of the United States Senate on April 11, 1930, in said Senate Document No. 30, *supra*, at pages 30-32, where it is reported, in part:

> "Outside the molls [located at the extension of Long Beach Entrance Channel] the channel runs due South [into the Pacific Ocean and Bay of San Pedro] for 700 feet, to the 40-foot contour. It was dredged [by the City of Long Beach] in 1926 to a depth of 40 feet for a width of 100 feet in the center, and to a depth of 35 feet for a width of 100 feet on each side, making a total channel width of 300 feet. Shoaling since 1926 has reduced the controlling depth to 34 feet. * * * The City has let a contract to dredge the approach channel and slip at Pier A and Pier B in the outer harbor to 35 feet. These piers will be used for general cargo. * * * Long Beach has already let a contract for this work at a cost of about $200,000. The dredged material will be used to make the fills at Piers A and B. The only question to be decided, therefore, is whether or not the federal government ought to take over the maintenance of these channels."

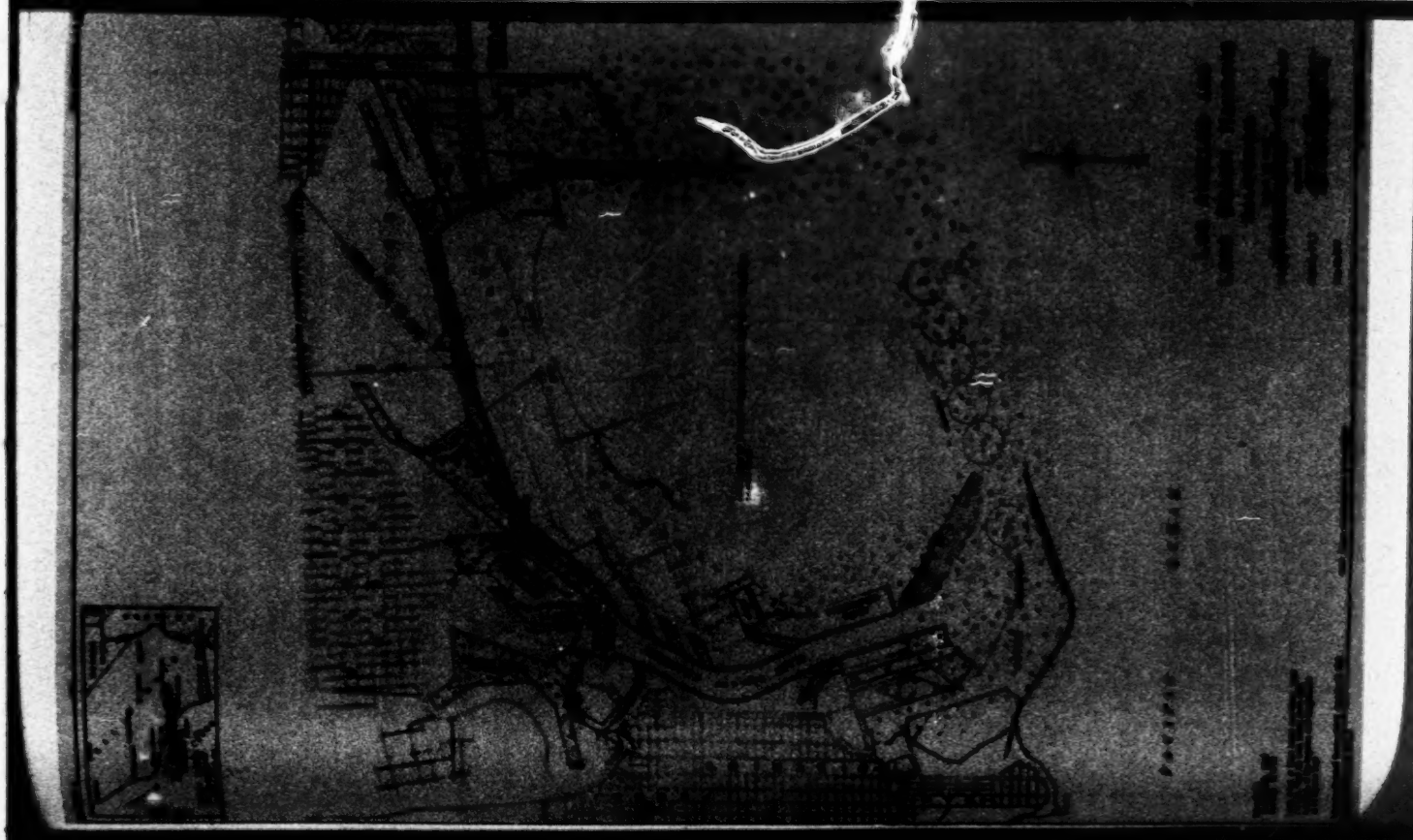
The District Engineer and Chief of Engineers recommended to the Senate Committee that such maintenance work be borne by the City of Long Beach and not at the

expense of the Congress (Senate Document No. 130, *supra*, pages 4, 32).

18. The Congress adopted the recommendations of the Chief of Engineers contained in said Senate Document No. 130 in its Act of July 3, 1930 (46 Stats. page 847), where Congress provided, in part, that:

> "The modification of the existing project recommended in the reports submitted in Senate Document No. 130, Seventy-First Congress, Second Session * * * are hereby adopted and authorized subject to the condition set forth in the said documents."

19. The Long Beach breakwater extension, the bulkhead, fills, wharfs and sheds at Piers A and B in Long Beach outer harbor and the channels dredged in the outer harbor, as aforesaid, are depicted on the map prepared by the District Engineer of Los Angeles dated January 16, 1930, accompanying his said report of said date, which map is attached to said Senate Document No. 130, a copy of which follows.



20. The City of Long Beach has expended approximately $5,750,000 of capital outlay, in addition to the proceeds from the 1924 and 1928 Harbor Fund Bonds, aforesaid, for the improvement and construction of facilities in its Outer Harbor, between the years 1925 and 1945. These facilities include the construction of the Navy landing facilities owned by the City of Long Beach, erected on filled-in submerged lands in its Outer Harbor, for its Piers D and E and extension of Pier A, and facilities connected therewith, all located on reclaimed submerged lands in its Outer Harbor.

(IV)

Some of the grants to the United States of leases and other interests in and to the tide and submerged lands owned by the City of Long Beach, situated in the Pacific Ocean and Bay of San Pedro and in the Long Beach Outer Harbor, are the following:

1. The United States of America entered into a lease with the City of Long Beach on October 8, 1943, covering approximately 30 acres of submerged lands owned by the City of Long Beach in its Outer Harbor, commonly known as "Victory Pier." Said Pier is that portion of the Long Beach breakwater extending out into the Pacific Ocean and the Bay of San Pedro a distance of approximately 4,690 feet.

(a) Said lease was executed upon a form prepared by the United States of America, being its "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

(b) Said lease granted to the United States the right during the existence of said lease, at the cost and expense of the United States, to construct permanent and temporary facilities on and connected with said breakwater, including an earth fill, together with quay wall, bulkhead, rock revetments, approach fill, pavements, tracks, power and water lines and other incidental structures within an area therein described. The demised premises are located on the harbor side of said breakwater, and contain approximately 30 acres. Access is afforded thereto from the southerly line of Seaside Boulevard by way of Pico Avenue extended, and that portion of existing Pier A located in the Long Beach Outer Harbor easterly of the Transit Shed thereof. Said lease provides that the demised premises shall be used exclusively for storage and marine facility. The term of said lease was to end on June 30, 1947, or six months following the ratification by the United States Senate of a Treaty of Peace between the United States of America and its present war enemies, whichever is sooner. The rental is one dollar for the term thereof. The United States is granted an option to renew the lease for an additional five-year period for a rental of the additional sum of one dollar, with a proviso that no renewal of such lease should extend the period of occupancy of the demised premises beyond the termination of the state of war and two years thereafter. The lease provides that the City shall not be required to undertake any maintenance of facilities leased or constructed thereunder by the United States, nor shall the City be required to do any maintenance or dredging during the period of said

lease within the channels adjacent to the demised premises or the channels by which the demised premises are reached from the Entrance Fairway.

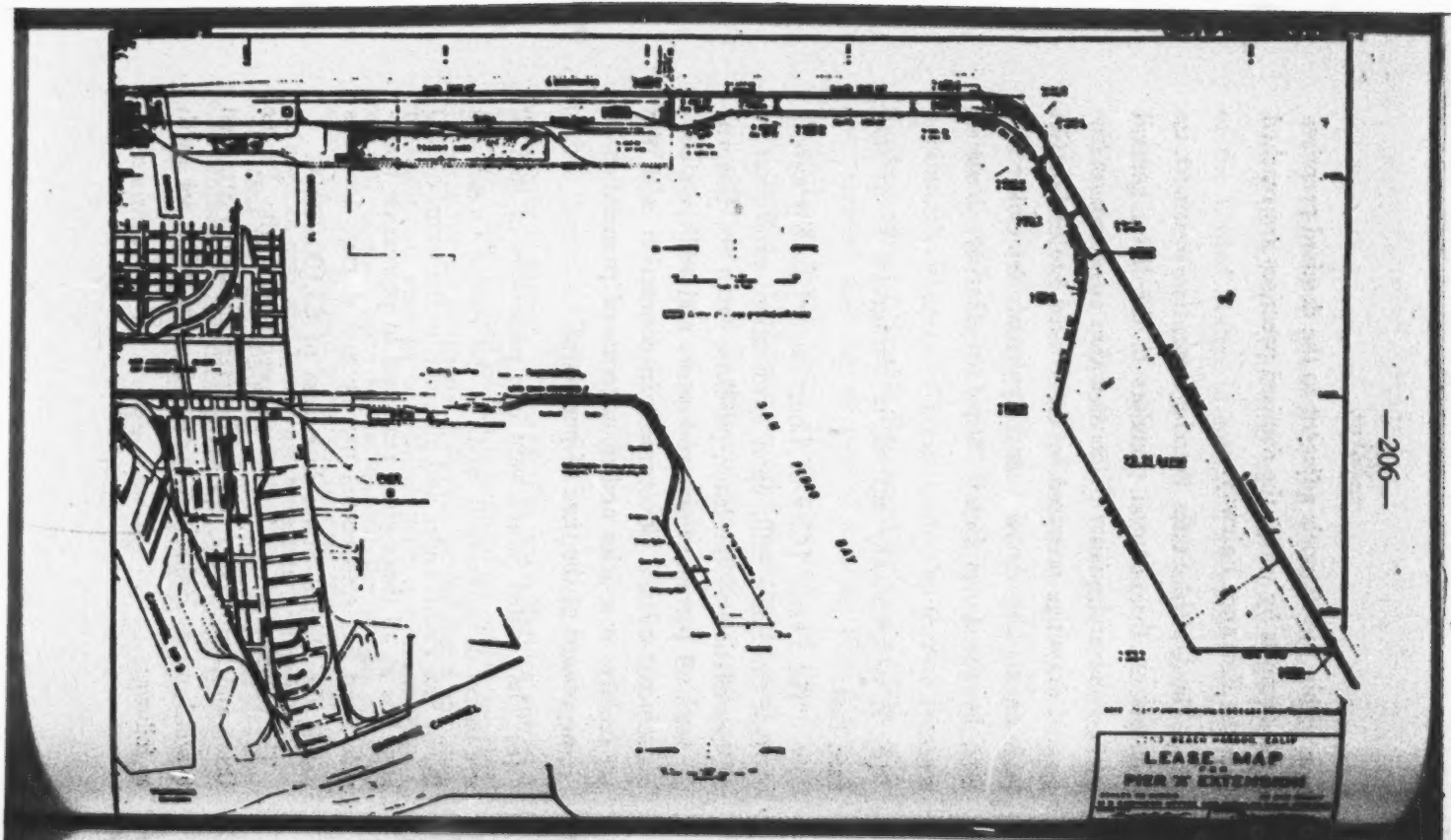
(c) The United States thereby agreed to construct its terminals on the demised premises to the lines, general arrangement and quality of construction as shown on designated drawings prepared by the United States District Engineer at Los Angeles and approved September 17, 1942, by the Long Beach Board of Harbor Commissioners.

(d) It is specifically agreed, in Paragraph 15 of said lease, that:

> "The Lessor [City of Long Beach] hereby agrees that the lessor will, upon termination, expiration or cancellation of the lease, purchase from the Government all permanent improvements and additions constructed by the Government in connection with the facility, at a price and upon terms of payment to be negotiated at the time of purchase."

(e) The United States went into possession of said 30 acre parcel of submerged lands in the Pacific Ocean and Bay of San Pedro under and pursuant to the terms of said lease, has at all times since remained in possession thereunder, and has constructed marine and storage facilities costing the United States in excess of $3,100,000.00.

The location of said demised premises in the Pacific Ocean and San Pedro Bay is depicted on a map attached to said lease as Exhibit A, a copy thereof being set forth as follows:


LEASE MAP
FOR
PIER 'A' EXTENSION

2. The United States of America by its Secretary of the Navy, Claude A. Swanson, entered into a written agreement accepting a "Revocable Permit" with the Board of Harbor Commissioners of the City of Long Beach on April 29, 1937, pursuant to Resolution No. 17 adopted by said Board of Harbor Commissioners. Said Resolution No. 17 declared that the

> "tide or submerged lands [are] not required at this time for purposes in connection with or for the promotion and accommodation of commerce, navigation and fishery,"

and authorized the Port Manager of the City of Long Beach to issue a Revocable Permit for the use of such lands, as well as other and additional lands, by the United States of America, for purposes therein set forth.

(a) By said Revocable Permit the City of Long Beach and its Board of Harbor Commissioners granted to the United States of America permission to use, in accordance with the terms, conditions and limitations contained in said permit, two parcels of tide and submerged lands in the Harbor District of the City of Long Beach for a term of one year ending on May 1, 1938.

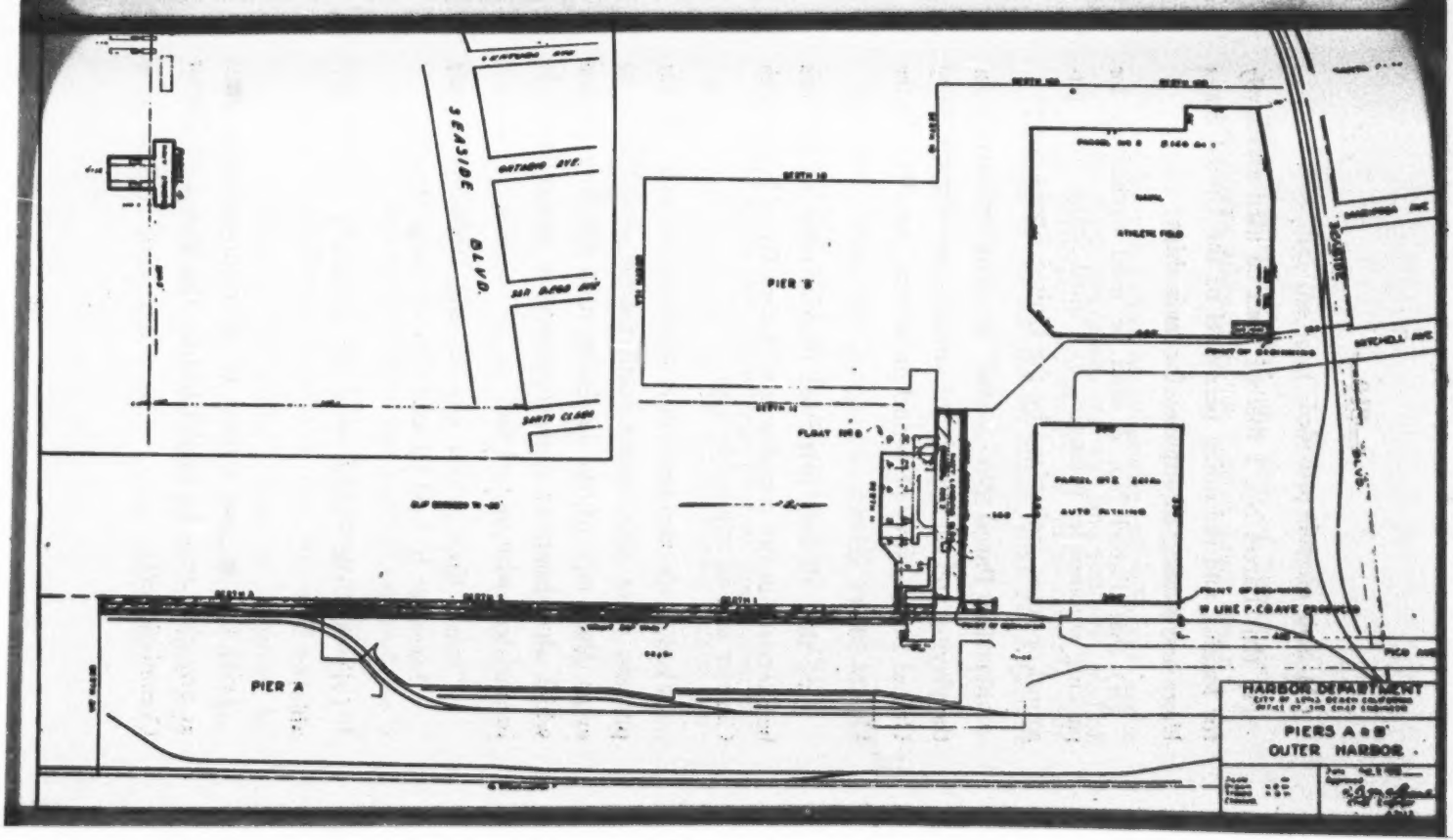
(b) Parcel No. 1 thereof consisted of all reclaimed lands, buildings, improvements and facilities forming what was generally referred to as "Navy Landing," on or attached to Berth No. 11, located between Piers A and B of the Long Beach Outer Harbor, reserving certain space to the City of Long Beach and portions of the buildings located thereon.

(c) Parcel No. 2 consisted of a 2.41 acre tract of reclaimed lands to be used for an auto parking area connected with said Navy Landing.

(d) Parcel No. 3, consisting of a 5.1 acre tract of submerged lands, is situated adjacent to Pier B, to be used for a naval athletic field.

(e) All three of said parcels are situated upon reclaimed submerged lands lying seaward of a line or ordinary high tide as it existed prior to reclamation and filling by the City of Long Beach, commencing in about the year 1924.

The locations of said three parcels are depicted on a map attached as Exhibit A to said Permit, and a copy thereof is set forth as follows:


SEASIDE BLVD.
ONTARIO AVE.
SANTA CLARA
PIER 'B'
ATHLETIC FIELD
MITCHELL AVE.
PARCEL NO. 2
AUTO RETAILING
PIER A
HARBOR DEPARTMENT
PIERS A & B
OUTER HARBOR

(d) Said Permit provided

(i) that Parcel No. 1 thereof shall be used exclusively for loading and unloading personnel of the United States Navy and loading of supplies for such ships;

(ii) that Parcel No. 2 shall be used exclusively for parking automobiles belonging to United States Navy personnel or those authorized by the United States Navy;

(iii) that Parcel No. 3 shall be used exclusively for the playing and carrying on of athletics now engaged in by United States Navy personnel or persons permitted by the United States Navy;

(iv) that all uses permitted thereby must at all times be exercised in full compliance with the City of Long Beach Charter and all applicable laws;

(v) that the demised lands shall not be used for any purpose other than as set forth therein, and that in no event shall any of the lands be used for any purpose which shall interfere with commerce or navigation or be inconsistent with any of the

> "trusts upon which any of said lands are or may hereafter be held by said City of Long Beach";

(vi) that the Permit was not assignable or transferable;

(vii) that it was subject to all rights-of-ways which at any time may be established by the Board of Harbor Commissioners;

(viii) that the land shall not be used in any way to interfere with any plan of harbor improvement adopted by the City of Long Beach;

(ix) "that upon the expiration of this permit, whether by revocation or otherwise, all wharves, piers, docks, slips, bulkheads, sea wall and channels, and all other permanent structures or improvements constructed or maintained hereunder, shall be or become the property of said City of Long Beach without compensation."

(e) Said Permit was accepted in writing by the United States, by its Secretary of the Navy, on April 13, 1937.

(f) Said Revocable Permit was renewed for a term ending on April 30, 1939, by Revocable Permit issued pursuant to the Board of Harbor Commissioners Resolution No. 49, and was accepted in writing on June 14, 1938 by the United States of America, by William P. Leahy, Acting Secretary of the Navy, upon substantially the same terms and conditions as set forth in the original Permit above mentioned.

(g) Said Revocable Permit was further renewed for a term ending on April 30, 1940, pursuant to Board of Harbor Commissioners Resolution No. 103 and was accepted in writing by the United States of America, by William D. Leahy, Acting Secretary of the Navy, on June 15, 1939, upon substantially the same terms and conditions as the original Revocable Permit, above mentioned.

3. The United States of America, by and through its Navy Department, on November 24, 1943, made written application to the Long Beach Board of Harbor Commissioners for a right to use portions of the submerged lands in the Long Beach Outer Harbor at the Entrance Channel for abutments for a proposed Retractable Pontoon Bridge over and across the Long Beach Harbor Entrance Channel. Subsequently, on December 22, 1943, the United States of America, by written modification, requested an easement for a temporary Retractable Pontoon Bridge across said Entrance Channel. Pursuant thereto, the Long Beach Board of Harbor Commissioners adopted its Ordinance No. H. D. 120, on January 27, 1944, and executed and delivered to the United States of America a Permit covering the parcels of submerged land as requested by the United States, as aforesaid, for the purpose of installing, maintaining and operating a Retractable Pontoon Bridge over and across said Entrance Channel upon the terms and conditions therein specified. The United States of America went into possession of said parcels described in said Ordinance No. H. D. 120, and are now in possession thereof under and pursuant to said written lease and permit.

A copy of the map accompanying said application of the United States for such Permit, is set forth as follows:

EAST
SEASIDE
BLVD
RANCHO
LOS
CERRITOS
ENTRANCE CHANNEL

4. On September 30, 1935, the Long Beach Board of Harbor Commissioners, pursuant to Harbor Ordinance No. 15, executed a written lease to the Army and Navy Young Men's Christian Association, as Lessee, of a site located upon reclaimed submerged lands adjacent to Pier A, for the construction of the Army and Navy YMCA Building.

(a) By said Harbor Ordinance No. 15 the Board of Harbor Commissioners determined that the demised premises, being artificially filled tide and submerged lands in the Harbor District of Long Beach are not required for use in connection with commerce, navigation or fishing, and that the granting of said lease of submerged and tide lands to the International Committee of Young Men's Christian Associations for the erection and maintenance of buildings and equipment for conducting an Army and Navy YMCA, for a term of 40 years, at a rental of $1 per year, subject to readjustment of rental every 10 years, would not be inconsistent with the trusts upon which the said lands are held by the City of Long Beach.

(b) The lease was granted upon specified terms, conditions, covenants and limitations for the exclusive purpose of maintaining an Army and Navy YMCA. Said lease provided that upon expiration of the term of the lease, the City of Long Beach should have the option of keeping all permanent structures or improvements constructed or maintained thereunder by Lessee, without compensation to Lessee, or to require Lessee to remove the same and leave the demised premises in as good condition as when received by it hereunder.

(c) On October 31, 1941 the United States of America, through its War Department, made written request to the City of Long Beach to lease to the United States the

southerly 126 feet of the larger parcel of land then under lease to the Army and Navy YMCA, as aforesaid. Pursuant thereto and on February 26, 1942, the Board of Harbor Commissioners approved and gave its consent to a partial assignment to the United States by Lessee under said Harbor Ordinance No. 15, said approval and consent to said assignment being conditioned upon said assignee being bound by and agreeing to carry out and perform all the terms, provisions, conditions and covenants of said lease granted by said Harbor Ordinance No. 15 in so far as the lands described in said assignment are concerned.

(d) Pursuant to said consent and approval of such assignment, the United States did, by and through its Federal Works Agency, request and obtain an opinion from the City Attorney of the City of Long Beach on July 7, 1942 concerning title to the demised premises, in which said City Attorney advised said Federal Works Agency in writing that the City of Long Beach is the sole and exclusive owner of said real property in fee simple, stating that

> "I believe that I am entirely familiar with the facts as well as the status of the law concerning legal title to the real property subject to the lease made by the City of Long Beach, as Lessor, to the International Committee of Young Men's Christian Associations, as Lessee pursuant to Harbor Ordinance No. 15, an ordinance of the Board of Harbor Commissioners of the City of Long Beach adopted September 30, 1935, a partial assignment of which was consented to and approved by the Board of Harbor Commissioners on or about February 26, 1942. I am of the opinion that *the City of Long Beach is the exclusive and sole owner of said real property in fee simple.*"

(e) Pursuant to said consent and assignment of lease, as aforesaid, the United States entered into possession of said demised premises and constructed its improvements on and upon the premises described in said partial assignment and have ever since been and are now in possession thereof.

(f) The United States of America, by and through its Federal Works Agency, has paid to the City of Long Beach the rental required by said lease, for and on behalf of said assignee, the United States of America.

5. On October 28, 1943, Contract No. W-04-353-Eng-65 was entered into between the United States of America and the City of Long Beach wherein it was recited

(i) that the United States had undertaken, as a specific part of the maintenance and improvement of existing river and harbor works at Los Angeles and Long Beach Harbors, the dredging of the mouth of the Los Angeles River Silt Diversion Channel as it entered the Pacific Ocean and the Bay of San Pedro;

(ii) that the dredging was authorized by the Act of Congress of October 17, 1940;

(iii) that the City of Long Beach had requested, in connection with the Long Beach Harbor development, the dredging materials be deposited in certain specified areas in the Los Angeles Outer Harbor; and

(iv) that the City would furnish, at no cost to the Government, the areas upon which the dredged materials should be deposited, and agreed to save the United States harmless from any damages or claims arising out of performance of the contract.

(v) It was thereupon agreed that the City of Long Beach would construct and maintain all levees necessary to confine the dredged materials deposited in the Pier A, Pier D and the East Fill as shown on designated drawings. In consideration of the excess cost to the United States arising under said contract, the City of Long Beach agreed to pay the United States for the increased cost, plus a specified amount for overhead and engineering; the total excess cost to the United States which the City agreed to pay being estimated at the sum of $175,000, which said sum the City agreed to pay upon acceptance and approval of said contract.

Said dredging work was performed by the United States. The dredged materials were deposited in the areas designated, including "Area J," immediately adjacent to and easterly of the Long Beach breakwater and Pier A adjacent thereto, hereinafter more particularly referred to. The City of Long Beach duly paid the said sum of $175,000 to the United States of America therefor.

6. On March 15, 1939 the City of Long Beach entered into four Drilling and Operating Contracts with the Long Beach Oil and Development Company, a corporation, covering parcels therein described as "W," "X," "Y," and "Z." A similar Drilling and Operating Contract was entered into between the City of Long Beach and the Long Beach Oil and Development Company on January 2, 1942 covering the parcel therein described as "Z-1," and a sixth Drilling and Operating Contract was entered into between the same parties on August 3, 1944, covering the parcel therein described as "J."

(a) Said parcel W is situated Westerly of the Entrance Channel, and consists entirely of filled and reclaimed sub-

merged land, and extends into the Pacific Ocean and the Bay of San Pedro approximately ½ mile from the line of ordinary high water prior to such filling and reclamation.

(b) Said Parcel X lies immediately east of and adjacent to the East line of the Long Beach Entrance Channel and likewise extends approximately ½ mile into the Pacific Ocean and the Bay of San Pedro seaward of the line of ordinary high water prior to the reclamation and filling of the former submerged lands.

(c) Parcel Y lies East of and adjoins said Parcel X; Parcel Z lies Easterly of said Parcel Y; both of said parcels being reclaimed tide and submerged lands.

(d) Parcel Z-1 lies immediately East of and adjacent to Long Beach breakwater and Pier A, and extends into the Pacific Ocean and Bay of San Pedro in excess of one-half mile from the line of ordinary high water prior to reclamation and filling of said area.

(e) Parcel J lies East of said Parcel Z and likewise extends approximately one-half mile into the Pacific Ocean and Bay of San Pedro from the line of ordinary high water.

(f) Said Long Beach Oil and Development Company, pursuant to said six Drilling and Operating Contracts with the City of Long Beach, has drilled and is now operating and producing from 193 oil and gas wells surfaced upon drill sites located within said Parcels W, X, Y, Z, Z-1 and

J, respectively. The bottom of many of said wells is located some distance seaward from the surface location, having, in many instances, been slant drilled in accordance with the terms of said contracts. Many of said wells are producing from well-holes bottomed in the so-called Terminal or Ranger Zones at points the vertical surface location of which is distant approximately one mile into the Pacific Ocean and the Bay of San Pedro from the shore line thereof.

(g) The City of Long Beach has received, since the year 1939, from said Long Beach Oil and Development Company, as net revenue to the City from proceeds of oil and gas produced from said 193 wells, to September 30, 1945, the sum of approximately $14,720,000.

(h) Under Section 229-X of the Charter of the City of Long Beach, added by amendment in the year 1937 (1937 Stats. p. 2939), as amended, all net revenues derived by the City of Long Beach and its Board of Harbor Commissioners from the proceeds of oil and gas produced from in, or under the tide and submerged lands of the City, are required to be deposited into the Harbor Revenue Fund and used exclusively for harbor development, improvement, maintenance, and other harbor purposes.

All funds thus derived from the proceeds of the oil and gas produced from said 193 wells have been and the same are now being devoted exclusively to harbor purposes, including the payment of principal and interest

on the 1924 and 1928 Harbor Bonds issued by the City of Long Beach for the creation and development of its Outer and Inner Harbors, as hereinabove alleged.

(i) In the year 1939 the Committee on Public Lands and Surveys of the United States Senate, 76th Congress, First Session, was fully informed of the four Drilling and Operating Contracts executed on March 15, 1939, between the City of Long Beach and Long Beach Oil and Development Company aforesaid, and of the revenues being or to be derived therefrom, the proposed location of the wells that were then being drilled thereunder as being situated and bottomed and to be produced and drilled from, in and under tide and submerged lands of the City of Long Beach in its Outer Harbor; and likewise of the provisions of Section 229-X requiring all oil and gas revenues to be deposited in the Harbor Revenue Fund and to be used exclusively for harbor purposes; and copies of said contracts between the City of Long Beach and the Long Beach Oil and Development Company covering said Parcels W, X, Y and Z were filed with said Senate Committee and made a part of its records in the proceedings and hearings held from March 27 to March 30, 1939, inclusive. The then City Attorney for the City of Long Beach made a full and complete statement to said Senate Committee of the ownership of the City of Long Beach of the tide and submerged lands out to three miles into the Pacific Ocean and of a strip three miles wide along the Pacific Ocean; and of the basis of its title being deraigned from the State of California, the

owner thereof by virtue of its sovereignty, and a statement of the development for oil and gas purposes of said tide and submerged lands and of the provisions of Section 229-X of the Charter amendment of 1937 as aforesaid. Said City Attorney likewise advised of the expenditures that had been made over the years by the City of Long Beach and of the numerous recognitions by the United States, its various branches, departments and agencies, of the ownership of the City of Long Beach of the tide and submerged lands within its boundaries, extending three miles out into the Pacific Ocean. [Hearings before the Committee on Public Lands and Surveys U. S. Senate, 76th Congress, First Session, SJ Resolution 83 and SJ Resolution 92 of March 27-30, 1939, inclusive, pages 281-330.]

Although the 76th Congress in the year 1939 had before it proposed resolutions calling for proceedings to declare the alleged ownership of the United States in and to the tide and submerged lands along the coast of the State of California, said resolutions were defeated, failed of passage in the Congress of the United States, and no action was taken or asserted by the Congress of the United States or any of its branches or agencies in the intervening six years until the filing of this complaint, despite the knowledge of Congress, gained at the hearings aforesaid, of the large expenditures made and being made by the State of California, the City of Long Beach, and other grantees and lessees of and from the State of California.

III.

City of Los Angeles.

(I)

The City of Los Angeles was established, its boundaries were fixed, and title to all tide and submerged lands within its boundaries were granted to it by the State of California, in the following manner:

1. The City of Los Angeles is a municipal corporation, chartered with a Freeholder's Charter in the year 1889 (Stats. 1889, p. 455), in accordance with Article XI, Sections 6 and 8 of the California Constitution. A new Charter of the City of Los Angeles was established in the year 1925 (Stats. 1925, p. 1024) as thereafter amended from time to time.

2. The City of Los Angeles is the legal successor of the Pueblo of Los Angeles organized in the year 1784 under the laws of the Kingdom of Spain; and likewise of the Pueblo of Los Angeles under the laws of the Republic of Mexico; and is likewise successor of City of Los Angeles as organized under the California Constitution of 1849 and by statute enacted by the legislature of the State of California in 1850 (Stats. 1850, p. 155) as amended from time to time.

3. The City of Los Angeles consolidated with the Town of Wilmington and the City of San Pedro on or about August 28, 1909, under the Consolidation Act of 1909. Said City of San Pedro was incorporated as the Town of San Pedro on or about March 1, 1888, and was reincorporated as a City of the Sixth Class on March 7, 1905, under the provisions of the Municipal Incorporation Act.

The Town of Wilmington was duly incorporated on December 27, 1905, under the Municipal Incorporation Act.

On or about November 30, 1906, there was duly annexed to the City of San Pedro, a certain area including the subdivision known as East San Pedro, being a substantial portion of Terminal Island bordering on the Pacific Ocean and Bay of San Pedro. Said area had formerly been claimed by the City of Long Beach as being within its westerly boundary.

4. By reason of the consolidations and annexations aforesaid, the southwesterly and seaward boundary of the City of Los Angeles was established as the southwesterly boundary of the County of Los Angeles. As of the date such consolidations and annexations took place, at all times since such dates, and at the present time, the southwesterly boundary of the County of Los Angeles has been established and fixed by the Legislature of the State of California as being coincident with the southwesterly boundary of the State of California (California Political Code, Sec. 3927), as hereinabove alleged. Hence, the southwesterly boundary of the City of Los Angeles is coincident with a line paralleling the coast of the State of California distant therefrom three English miles in the Pacific Ocean, said line being measured parallel to a line joining the extremities of indentations and bays along the coast of California. By reason thereof the boundaries of the State of California, of the County of Los Angeles, and of the City of Los Angeles, in the vicinity of the former City of San Pedro and Town of Wilmington, is a line three miles seaward from and parallel to a line tangent to and joining Point Fermin and Point Lausen, which said points mark the limits of the Bay of San

Pedro, with the Bay of San Pedro lying northeasterly of said last mentioned line.

5. By Act of the Legislature of the State of California approved May 1, 1911 (1911 Stats., p. 1256), the State granted to the City of Los Angeles the title of the State

> "held by said State by virtue of its sovereignty, in and to all tide lands and submerged lands, whether filled or unfilled, within the present boundaries of said City, and situated below the line of mean high tide of the Pacific ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held in trust for harbor purposes. Said Act was subsequently amended with the enlargement of the coastal boundaries of the City of Los Angeles, so as to grant to the City all tide and submerged lands within its westerly and southwesterly boundaries as established from time to time and as presently established. (1917 Stats., p. 159; 1929 Stats., p. 1085.)

(II)

The Harbor of Los Angeles may be generally described in the following manner:

1. The harbor known as the Harbor of Los Angeles is situated at the westerly end of San Pedro Bay in the Pacific Ocean. The harbor consists of a so-called Outer Harbor and an Inner Harbor. The Outer Harbor consists of that portion of the Pacific Ocean and San Pedro Bay devoted to harbor purposes lying generally northerly of the breakwater extending from approximately Point Fermin southeasterly into the Pacific Ocean and Bay of San Pedro, and lying immediately to the east of the easterly bluff of Point Fermin and San Pedro. This portion of the Harbor has been generally designated as San Pedro Harbor.

2. The Inner Harbor consists of those improvements for harbor purposes made within the area of the former Town of Wilmington reclaimed from low lying flats north of Terminal Island. This area was originally known as the Harbor of Wilmington.

3. The harbor developments of Wilmington Harbor have proceeded with the development of the Entrance Channel, the East Basin, Turning Basin, West Basin and Cerritos Channel. The Inner Harbor is connected with the Outer Harbor by the so-called Main Channel or Entrance Channel now approximately 1000 feet in width.

4. The limits of reclamation have been determined and fixed by the United States War Department in the establishment of the harbor line first established in the year

1891 and changed from time to time thereafter. These harbor lines consist of a Pierhead Line beyond which wharves or other structures are not permitted to extend into the navigable waters of the channels; and Bulkhead Lines establishing the limit behind which owners are permitted to fill or otherwise reclaim and develop the land, whether tidelands, or submerged lands, or uplands.

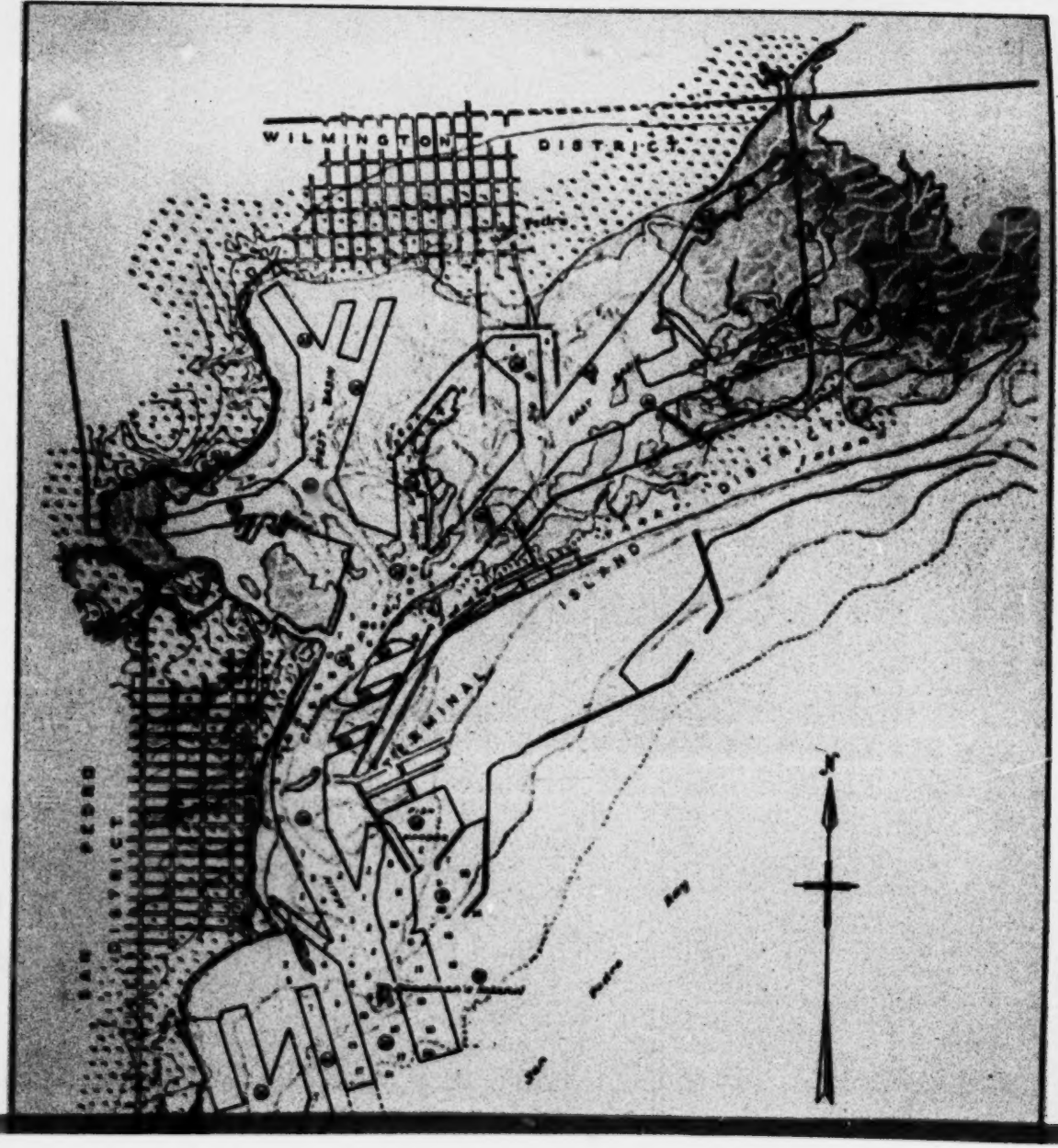
5. In the year 1850 and prior thereto the westerly limits of San Pedro Bay consisted of a headland or bluff known as Point Fermin. The east face of said Point rose abruptly above the waters and adjacent channels and lay in a north and south direction. The northerly shore of San Pedro Bay was formed by a long, regular, crescent beach extending generally from Point Fermin Bluff to Point Lasuen on the south. This beach, in the four miles southward from Point Fermin, fronts upon a narrow upland or island formed by sand dunes and vegetation, formerly called Rattlesnake Island, now called Terminal Island. To the north of this beach and upland was a low, flat, marshy area into which the Old San Gabriel and the Los Angeles Rivers emptied, and thence flowed into the Pacific Ocean at either end of said Rattlesnake Island. Said low, flat, marshy area was threaded with sloughs and channels and was known as Wilmington Lagoon, or the Inner Bay of San Pedro. Close to the bluff of Point Fermin was the main Inner Channel. This channel emptied into the Bay of San Pedro flowing between said Bluff and the westerly end of Rattlesnake Island over a long sand bar. Southwesterly from the end of Rattlesnake Island and approximately one mile distant therefrom, situated in the Pacific Ocean and San Pedro Bay, was a well defined, precipitous rock and upland known as Deadman's Island.

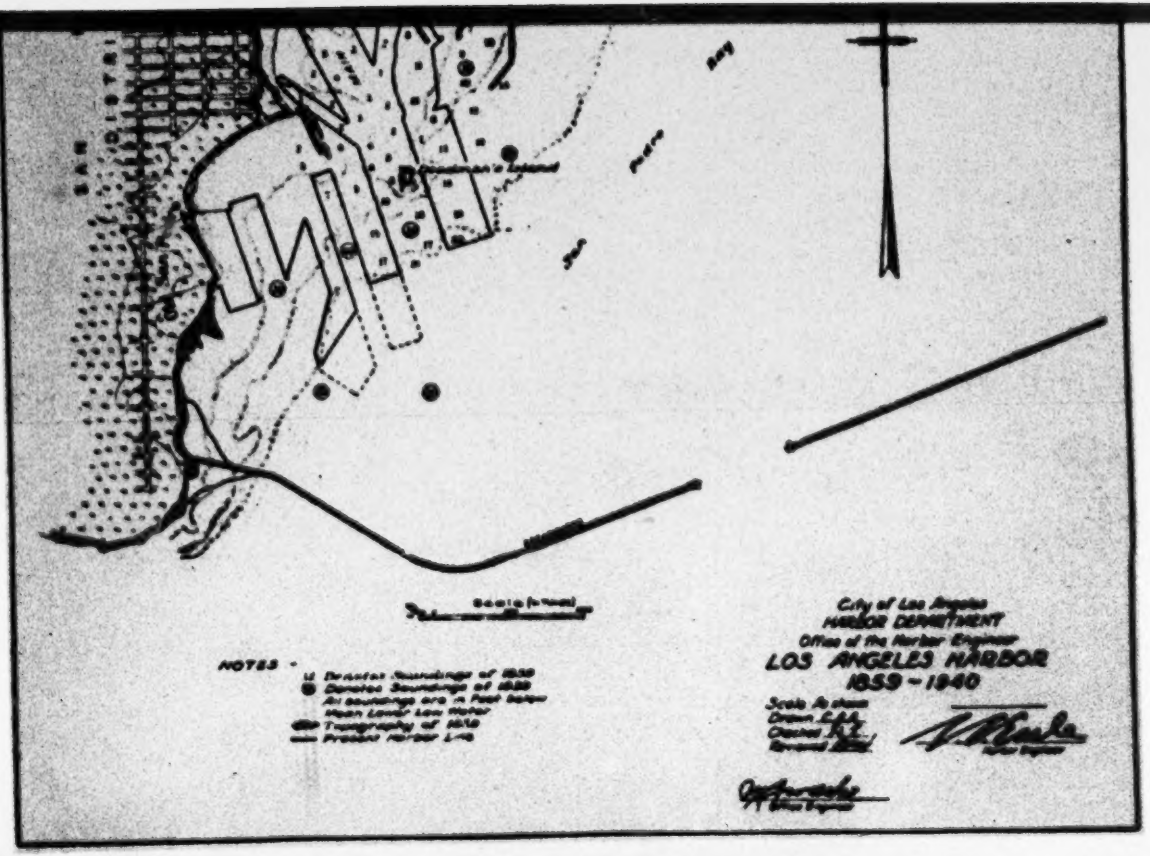
(III)

The United States has surveyed this Harbor of Los Angeles from an early date and has participated in its development in the following manner:

1. Congress, by Act of August 17, 1848, directed the United States Coast Survey to survey and chart the western coast of North America. The United States Coast Survey thereupon caused a series of maps and charts of the Pacific Ocean to be prepared. In the year 1852 the United States Coast Survey made a reconnaissance of San Pedro Harbor, followed by hydrographic surveys in the years 1854 and 1859. Thereafter, pursuant to Acts of Congress, the United States Coast and Geodetic Survey caused topographic and hydrographic surveys to be made of the harbors known as Wilmington Harbor, San Pedro Harbor, and Los Angeles Harbor; and prepared and published maps and charts thereof.

A copy of the 1859 United States Coast Survey map upon which have been superadded the harbor lines established therein by the United States, as aforesaid, as the same were in effect in the year 1940, is set forth as follows:


WILMINGTON
DISTRICT
N


City of Los Angeles
HARBOR DEPARTMENT
Office of the Harbor Engineer
LOS ANGELES HARBOR
1859 - 1940
NOTES -

For purposes of illustrating the transactions hereinafter alleged between the City of Los Angeles and the United States, a photograph showing a major portion of the Los Angeles Harbor is set forth as follows:



2. Since the year 1869 the Secretary of War, the War Department of the United States, the Chief of Engineers of the United States Army, the United States Division Engineer, the local agency known as the United States District Engineer Office at Los Angeles, and since 1902 the Board of Engineers for Rivers and Harbors, have been immediately in charge of certain phases of improvements in the San Pedro, Wilmington and Los Angeles Harbors. In connection therewith said agencies have made and platted surveys thereof, have established harbor lines in the years 1891, 1908 and 1911 and have modified the same from time to time; have furnished reports required by Congress and by Federal agencies of administration; and have supervised the work of improvement of the channels of said harbor and the construction of said breakwater. Such improvements, however, by the United States and its officers above mentioned have not included the construction, maintenance, supervision or financing of any port improvement, such as slips, docks, terminals, bulkheads, warehouses, wharves, sheds, streets, railroads and the like, but these latter have been constructed, financed and furnished by the City of Los Angeles and private interests within Los Angeles Harbor.

3. The development of the Harbor of Los Angeles is set forth in detail in the Annual Reports of the District Engineer of the Corps of Engineers, United States Army, to the Chief of Engineers, United States Army; from said Chief of Engineers, United States Army, to the Secretary of War; from the Board of Engineers for Rivers and Harbors to the Secretary of War; and from the Secretary of War to the Committees on Commerce and Navigation and on River and Harbor Improvement, and to other Committees of the Senate and House of Representatives of Congress. Various of said reports were severally

adopted by the Congress of the United States in the passage of River and Harbor Acts, designated below. Said Acts of Congress are as follows:

Act of June 10, 1872 (17 U. S. Stats. c. CDXVI);
Act of March 3, 1875 (18 U. S. Stats. c. 134);
Act of June 18, 1878 (20 U. S. Stats. c. 264);
Act of March 3, 1879 (20 U. S. Stats. c. 181);
Act of June 14, 1880 (21 U. S. Stats. c. 211);
Act of August 2, 1882 (22 U. S. Stats. c. 375);
Act of July 5, 1884 (23 U. S. Stats. c. 229);
Act of August 5, 1886 (24 U. S. Stats. c. 929);
Act of August 11, 1888 (25 U. S. Stats. c. 860);
Act of September 19, 1890 (26 U. S. Stats. c. 907);
Act of July 13, 1892 (27 U. S. Stats. c. 158);
Act of June 3, 1896 (29 U. S. Stats. c. 314);
Act of February 17, 1897 (29 U. S. Stats. c. 236);
Act of June 4, 1897 (30 U. S. Stats. c. 2);
Act of July 1, 1898 (30 U. S. Stats. c. 546);
Act of March 13, 1899 (30 U. S. Stats. c. 424);
Act of March 3, 1901 (31 U. S. Stats. c. 853);
Act of June 13, 1902 (32 U. S. Stats. c. 1079);
Act of June 28, 1902 (32 U. S. Stats. c. 1301);
Act of March 3, 1903 (32 U. S. Stats. c. 1007);
Act of April 28, 1904 (33 U. S. Stats. c. 1762);
Act of March 3, 1905 (33 U. S. Stats. c. 1482);
Act of March 3, 1905 (33 U. S. Stats. c. 1483);
Act of June 30, 1906 (34 U. S. Stats. c. 3914);
Act of March 2, 1907 (34 U. S. Stats. c. 2509);
Act of March 4, 1907 (34 U. S. Stats. c. 2918);
Public Resolution 14, March 26, 1908 (35 U. S. Stats. No. 14, p. 569);
Act of March 3, 1909 (35 U. S. Stats. c. 264);
Act of March 4, 1909 (35 U. S. Stats. c. 299);
Act of June 25, 1910 (36 U. S. Stats. c. 382);
Act of July 25, 1912 (37 U. S. Stats. c. 253);

Act of March 4, 1913 (37 U. S. Stats. c. 144);
Act of March 4, 1915 (38 U. S. Stats. c. 142);
Act of July 27, 1916 (39 U. S. Stats. c. 260);
Act of August 8, 1917 (40 U. S. Stats. c. 49);
Act of July 18, 1918 (40 U. S. Stats. c. 155);
Act of March 2, 1919 (40 U. S. Stats. c. 95);
Act of June 4, 1920 (41 U. S. Stats. c. 228);
Act of June 5, 1920 (41 U. S. Stats., Part I, c. 252);
Act of September 22, 1922 (42 U. S. Stats. c. 427);
Act of March 3, 1925 (43 U. S. Stats. c. 467);
Act of July 3, 1930 (46 U. S. Stats. c. 847);
Act of August 30, 1935 (49 U. S. Stats. c. 831);
Public No. 868, Chap. 895, 3rd Session, 76th Congress, Approved October 17, 1940.

4. The improvement of San Pedro Harbor was first recommended in the years 1869 to 1871 by the Board of Engineers. The Secretary of War, in his Annual Report for 1871, recommended to Congress that an appropriation be made for the construction of a jetty or breakwater 7000 feet long between the points known as Deadman's Island and the westerly tip of Rattlesnake Island for the purpose of deepening the water in the entrance channel and in the inner channel and of confining the flow of water from the Inner Harbor to the Outer Harbor. Said work was authorized by the River and Harbor Act of June 10, 1872 and subsequent acts.

5. The United States Engineer, pursuant to said Acts of Congress, proceeded to construct such jetty or breakwater connecting Deadman's Island and the westerly tip Rattlesnake Island, which breakwater was thereafter

known as the East Jetty. Said breakwater was completed in the year 1881. Another breakwater was constructed on the west side of the main or entrance channel beginning in the year 1876, which breakwater was thereafter known as the West Jetty.

(IV)

Title to portions of the submerged lands in the Pacific Ocean and Bay of San Pedro was ruled by the Department of Justice as early as 1902 to be held by the State of California.

1. The effect of the construction of the said East Jetty, beginning in the year 1872, was, among other things, to cause an artificial accretion of land to form against the easterly side of said Jetty and the southerly shore of Rattlesnake Island, thereby extending Rattlesnake Island into the Pacific Ocean and Bay of San Pedro in a southerly and easterly direction. Since the year 1872, hundreds of acres of upland have accreted or been artificially reclaimed by filling in along the easterly side of East Jetty and the gradual extending of the shore of Rattlesnake (now Terminal) Island.

2. The question of title and ownership of the land thus artificially formed easterly of the East Jetty and extending into the Pacific Ocean and Bay of San Pedro on the westerly end of Rattlesnake Island, as aforesaid, was raised. The United States District Engineer at Los Angeles requested an opinion from the United States Attorney in the year 1902 as to whether the title to these artificial accretions formed against the East Jetty breakwater

were owned by the State of California or were owned by the United States of America.

3. In the records of the United States District Engineer's Office entitled "Letters Received Vol. 2, Wilmington Harbor, January 1899-January 1903", p. 91, there is recorded a written opinion of L. H. Valentine, United States Attorney at Los Angeles, written to Captain Edgar Jadwin, United States District Engineer Officer, Los Angeles, dated February 28, 1902, stating that title to all accretions which have formed upon tide and submerged lands and against the East Jetty breakwater constructed by the United States belong to the State of California and not to the United States.

(V)

Thereafter the United States recognized and asserted the title to the State of California, its grantees or lessees, in and to the reclaimed and artificially accreted lands easterly of the East Jetty Breakwater, and upon tide and submerged lands extending into the Pacific Ocean and San Pedro Bay in front of Rattlesnake (Terminal) Island.

1. One of such acts of recognition of the State's ownership and that of its grantee, the City of Los Angeles, of such portions of submerged lands formed in the Pacific Ocean and San Pedro Bay relates to a lease by the City of Long Beach in the year 1905 to a portion of submerged land in an area now within the boundaries of the City of Los Angeles.

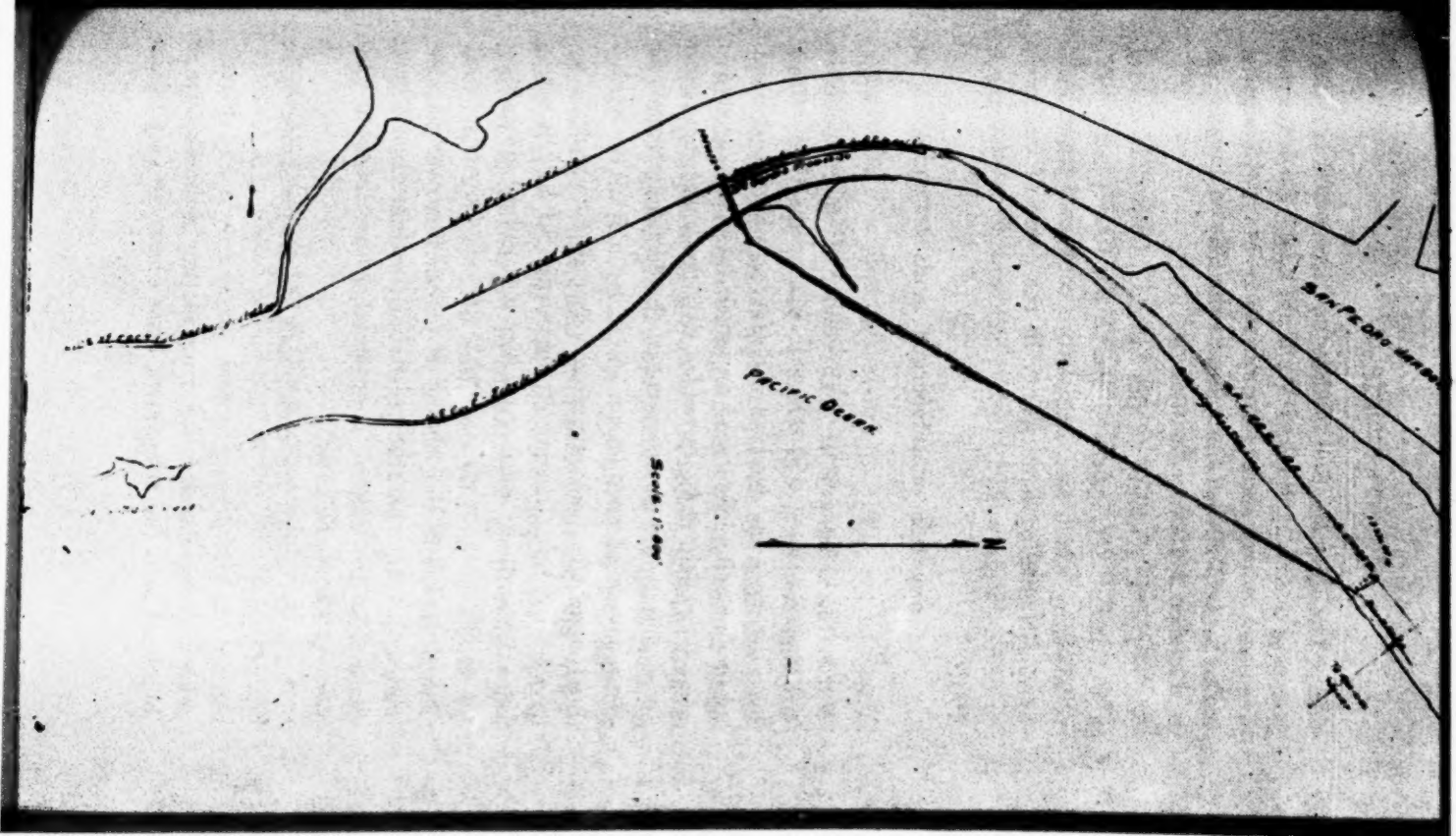
2. Prior to the consolidation and annexation of the City of San Pedro and Town of Wilmington to the City

of Los Angeles in the year 1909, as aforesaid, both the City of Long Beach and the City of San Pedro claimed that the westerly portion of Terminal Island was situated within the jurisdiction of each respective municipality. This dispute as to the westerly boundary of the City of Long Beach was not determined until the boundary was fixed in the Charter of the City of Long Beach approved by the Legislature on February 26, 1907, as above alleged, at which time the westerly boundary of the City of Long Beach was fixed at the westerly line of Block 10 in East San Pedro Tract as per a recorded map, being approximately in the middle of Terminal Island.

3. Commencing in 1891, Los Angeles Terminal Railway Company, a corporation, constructed its main line from Los Angeles to Long Beach, thence westerly along the shore of Terminal Island to its harbor terminus at the westerly tip of Terminal Island, being at the easterly end of the East Jetty breakwater between Terminal Island and Deadman's Island, as aforesaid. San Pedro, Los Angeles and Salt Lake Railroad Company was the successor in interest of Los Angeles Terminal Railway Company in about the year 1901.

4. On October 2, 1905, the City of Long Beach executed a written lease with San Pedro, Los Angeles and Salt Lake Railroad Company (hereinafter sometimes referred to as "the Railroad Company") leasing for a period of 46 years from date thereof a parcel of approximately 80 acres of tide and submerged lands extending into the Pacific Ocean and Bay of San Pedro easterly of the angle

formed by the East Jetty breakwater with the westerly tip of Terminal Island. Said lease gave the Railroad Company the right to fill in all lands situated below mean high water mark within the described tract and to use and occupy the same during the term of the lease. One of the conditions of the lease was that the Railroad Company within five years after date thereof shall construct a breakwater or bulkhead of character and size to be approved by the United States War Department along the front or seaward side of said tract and for failure to construct said breakwater the lease should be forfeited. A plat was attached to said map delineating the demised premises. A copy of said plat is set forth as follows, with the described premises being enclosed within the heavy border shown thereon.


Pacific Ocean

5. The City of San Pedro, on September 12, 1906, executed a written lease to W. T. Wheatly for a term of five years, which parcel substantially overlapped the parcel leased to the Railroad Company by the City of Long Beach on October 2, 1905, as aforesaid.

6. The Legislature of the State of California enacted a Validation Act, approved March 23, 1907 (Stats. 1907, p. 987), by which said Legislature confirmed leases made by any county or municipality in the State of California prior to January 1, 1907 and subsequent to January 1, 1901,

> "of any tide or submerged lands belonging to the State"

within the boundary of such county or municipality or within boundaries over which it was at the time of such lease acting in the exercise of *de facto* authority. By such statute priority in date of any such lease was deemed to give priority in right; provided that the lessee commenced in good faith the improvement of the demised premises for the purposes of such lease.

7. The Supreme Court of California in *Wheatly v. Consolidated Lumber Co.* (1914), 167 Cal. 441, described the history of the annexations of the portion of Terminal Island in question by the Cities of San Pedro and Long Beach, the conflicting claims of jurisdiction over such territory, the litigation that grew out of such annexations, the lease from the City of Long Beach to the Railroad Company of October 2, 1905,

> "to certain of the contiguous submerged lands of the Ocean"

with the requirement for constructing a breakwater or bulkhead, and the subsequent lease from the City of San

Pedro to Wheatly of substantially the same parcel of submerged lands, and the fact that the Railroad Company diligently and at great expense prosecuted the work of reclamation of the submerged lands called for by its lease. The Court thereupon held that while neither municipality at the time the respective leases were in effect had the right to lease the submerged lands because those lands were

> "not only held in ownership by the State, but only a limited dominion and control over it were vested in the Legislature under the restrictions of the constitution,"

nevertheless the Validation Act of 1907, as aforesaid, cured the defect in the lease and gave priority to the lease from the City of Long Beach to the Railroad Company.

8. Prior thereto, on April 30, 1903, the Railroad Company had entered into an agreement with the United States District Engineer Office at Los Angeles. At the request of said Engineer Office, the Railroad Company thereby granted to the United States the right to lay its pipes for the discharge of dredged materials over and across lands of the Railroad Company on Terminal Island for the purpose of conveying the dredgings from the Inner Harbor and discharging them in front of Terminal Island in the Pacific Ocean and Bay of San Pedro. The Railroad Company thereby agreed that it would protect not less than 2,500,000 cubic yards of such dredgings so deposited by the United States from washing away or in any manner damaging the harbor or public or private interests, by constructing a bulkhead or sea-wall in the Pacific Ocean and Bay of San Pedro in the manner specifically covenanted in said lease with the City of Long Beach dated October 2, 1905, as aforesaid.

Said lease with the City of Long Beach dated October 2, 1905, was obtained by the Railroad Company in order to give it an interest in the real property being formed by reclamation and artificial accretion through the deposit of such dredged materials by the United States in the Pacific Ocean and Bay of San Pedro in front of Terminal Island within the area described in said lease.

Following thereupon the United States did accept said grant from the Railroad Company and did deposit large amounts of dredged material within the area described in said lease of October 2, 1905.

9. In the month of August, 1906, said W. T. Wheatly filed an application with the War Department through its United States Engineer Office at Los Angeles for permission to bulkhead and fill in an area in the Pacific Ocean and Bay of San Pedro covered by his lease from the City of San Pedro, as aforesaid, and likewise covered by the lease from the City of Long Beach to the Railroad Company, as aforesaid.

10. The Railroad Company, on September 6, 1906, filed a protest with the War Department against the granting of said application of W. T. Wheatly, and in said protest advised the War Department in writing, in part, as follows:

> "That the undersigned [Railroad Company] is the owner in fee simple of a portion of above described area, and is lessee of all the remainder of said area under a lease made to it by the City of Long Beach, a municipal corporation, having control of and claiming to be the owner of all of the said area not actually owned by the undersigned, a certified copy of which lease is hereto attached marked 'Exhibit A' and made

a part hereof . . . That the undersigned for some time past has had under consideration the preparation of plans for the construction of a sea-wall or jetty which would protect its lands, as well as reclaim that portion thereof which were lost by the action of the said currents, and also reclaim the area so leased to it by said City of Long Beach. And the undersigned has this day filed in the office of Capt. Amos Frees at Los Angeles, California, an application to the Secretary of War for permission to construct a sea-wall or jetty for the purpose of reclaiming the lands so claimed by it, and which said lands are practically identical with the area above described, reference to which application is hereby made for particulars. And the undersigned represents that, in the event that its application to construct said sea-wall, and to reclaim said area, is granted, that it proposes to begin and prosecute to completion as soon as possible the said work."

11. On September 6, 1906, the Railroad Company filed its application with the War Department through its United States Engineer Office at Los Angeles for a permit to construct a sea-wall around and reclaim lands included within the lease to it from the City of Long Beach dated October 2, 1905. An affidavit was filed attached to which was a copy of the Memorandum Agreement dated April 30, 1903, whereby the Railroad Company granted to the United States Government, at the request of its District Engineer, the right to lay pipes across the lands of the Railroad Company on Terminal Island for the purpose of

conveying the dredgings into and reclaiming the lands within the area leased to the Railroad Company by the City of Long Beach, as aforesaid.

12. On October 27, 1906, the War Department, through its Acting Secretary of War, issued its permit to the Railroad Company to construct said sea-wall or breakwater.

13. Immediately thereafter the Railroad Company constructed said sea-wall in the Pacific Ocean and Bay of San Pedro in front of Terminal Island enclosing the land described in the lease from the City of Long Beach to the Railroad Company dated October 2, 1905, at a total cost to the Railroad Company of approximately $34,000. Said area was thereupon filled in by the United States and the Railroad Company, at a cost of filling to the Railroad Company of approximately $33,000. The construction of said sea-wall and filling were completed by December, 1908.

14. The 1907 Annual Report of the Chief of Engineers of the United States Army to the Secretary of War reported (p. 2133) that:

> "The filling and bulkheading of certain areas in the outer harbor has been in progress during the year by . . . San Pedro, Los Angeles and Salt Lake Railroad Company . . . a total of 827,320 cubic yards of material was dredged . . . This material was wasted as follows: East of East Jetty to concession of Salt Lake Railroad Company 484,420 cubic yards."

15. In the Annual Report of 1910 of the Chief of Engineers, United States Army to the Secretary of War it was reported (p. 904) that:

> "The San Pedro, Los Angeles and Salt Lake Railroad Company has also bulkheaded about 81 acres of land reclaimed with material deposited by the government dredge."

16. In the year 1914 this bulkheading and reclamation by the Railroad Company was reported to Congress by the Secretary of War in House Document No. 896, 63rd Congress, 2nd Session, where it is reported that:

> ". . . The Salt Lake Railroad Company has constructed a bulkhead within which the United States has deposited dredgings from the inner harbor, thereby reclaiming about 70 acres of land. The Salt Lake Railroad Company, in front of its property and between United States Station 107 and a point about 1000 feet northeast of United States Station 404 has dredged a channel about 20 feet deep, about 100 feet wide and about 3000 feet long, the material removed having been pumped upon its land nearby."

17. The City of Los Angeles, and the Los Angeles and Salt Lake Railroad Company [formerly San Pedro, Los Angeles and Salt Lake Railroad Company] entered into an agreement under date of March 4, 1921, reciting in part that:

> "Whereas, the United States Government has approved a plan for widening the main channel of the Los Angeles Harbor on the easterly side thereof for the width of approximately 1000 feet and preparations

have been made to start such work of widening upon condition that the City shall clear the way to fixing the title of lands and wharves necessary to be taken or removed for such channel widening; and

Whereas, the Company is the owner or holder under grants, franchises, leases or other rights of a considerable portion of the lands and of such wharves so required to be taken for the widening of said channel;"

The Railroad Company thereupon surrendered and transferred to the City of Los Angeles all its right in Parcel No. 1 therein described, held by the Railroad Company under said lease from the City of Long Beach dated October 2, 1905, with the right of the Railroad Company to retain possession of said Parcel No. 1 until required in the work of widening the Entrance Channel. The City thereupon re-leased Parcel No. 3a described therein to the Railroad Company, being a parcel of unreclaimed submerged lands in the Pacific Ocean and Bay of San Pedro, with the right to deposit dredged materials and reclaim such land. The City likewise re-leased to the Railroad Company Parcel No. 3b therein described, which parcel covers all that portion of the tide and submerged lands held by the Railroad Company under the lease of October 2, 1905 from the City of Long Beach remaining after relinquishment to the City of Los Angeles of that portion thereof described as Parcel No. 1. The City of Los Angeles thereby acknowledged the validity of said lease from the City of Long Beach, and thereby extended the terms of the original lease for a period of 30 years from the date of said agreement of May 11, 1921.

18. Said Parcel No. 1 released to the City of Los Angeles by the Railroad Company on May 11, 1921, afore-

said was thereafter granted to the United States in the 61.98 acre parcel of the so-called Reservation Point Exchange of 1927 hereinafter alleged.

(VI)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease from the City of Long Beach in 1906 of submerged lands since included within the boundaries of the City of Los Angeles, is the following:

1. A lease of submerged lands adjacent to and westerly of the parcel leased by the City of Long Beach to the Railroad Company on October 2, 1905, as aforesaid, was executed by the City of Long Beach to Thomas Hughes, Louis Blankenhorn and D. P. Hatch under date of February 12, 1906. Said lease was recorded in Book 53, page 295, records of Los Angeles County Recorder's office. It was for a term of 50 years from said date upon conditions requiring said lessees, within a specified time, to complete the work of bulkheading the demised premises.

2. Said lease was on March 22, 1906, by said lessees assigned to Pacific Wharf & Storage Company, a corporation.

3. Said lease was validated by the Act of the Legislature of the State of California approved March 23, 1907 (Stats. 1907, page 987), as aforesaid.

4. Immediately after such assignment to it, Pacific Wharf & Storage Company commenced the construction of a bulkhead in the Pacific Ocean and Bay of San Pedro enclosing the area of said leasehold; and the area thereof

was thereupon filled in by the United States by the deposit of materials dredged from the Inner Harbor.

5. This bulkheading and dredging was reported to the Secretary of War in the Annual Report of the Chief of Engineers for the year 1910 (page 904), stating, in part, as follows:

> "The Pacific Wharf and Storage Company has enclosed about 80 acres within a stone bulkhead and have reclaimed a portion of the area with material dredged from the inner harbor by the government dredge."

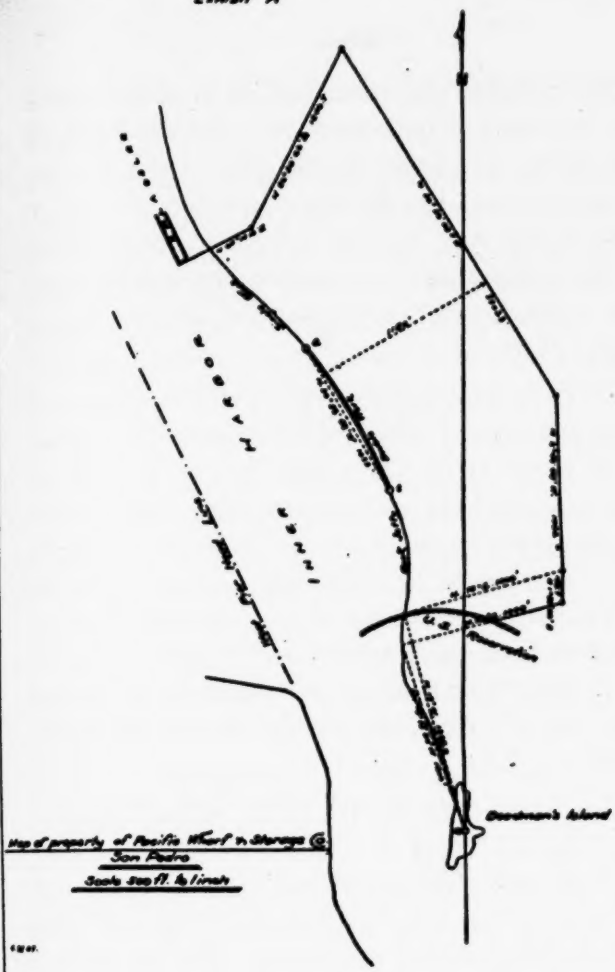
Likewise this was reported to Congress by the Secretary of War on several occasions, including the report contained in House Document No. 896, 63rd Congress, 2nd Session, page 14, where it is reported to Congress that:

> "Across the channel is a bulkhead constructed by the Pacific Wharf and Storage Company which is about 1500 feet deep, is wharfed on the north side and has been dredged to 30 feet. This company has reclaimed about 70 acres of land nearby."

6. On May 11, 1909 Pacific Wharf and Storage Company executed an indenture mortgaging its said leasehold and other properties to Merchants Trust Company, as trustee, to secure the payment of a bonded indebtedness in the sum of $500,000, which mortgage was duly recorded in Book 3792, Page 1 of Deeds, Los Angeles County Recorder's office. Attached to said mortgage is a photostatic copy of the parcel of tide and submerged lands in the Pacific Ocean and Bay of San Pedro thus leased to the predecessors of Pacific Wharf and Storage Company by the City of Long Beach, as aforesaid, and thus mortgaged by said corporation.

A copy of said map is set forth as follows:

Exhibit A



Recorded at request of Pilger. May 13. 1909. at 5 min past 3 P.M.
in Book 2136 Page 1 of Mortgages Los Angeles County Records.
J. Pilgar County Recorder By E. E. Salladay Deputy.
Recorded at request of Mgee May 13 1909. at 5 min past 3 P.M.
in Book 2149 Page 210 of Chattel Mortgages Los Angeles County Records
J. Pilgar County Recorder By E. E. Salladay Deputy.
A full true and correct copy of original recorded at
request of Crawford. May 13 1909. at 5 min past 3 P.M. 425
J. Pilgar County Recorder By H. M. Rabbitz Deputy

7. Said mortgage was foreclosed by Merchants Trust Company on behalf of the bondholders, and thereafter, on March 5, 1918, said property was sold at sheriff's sale to Emmanuel Cohen, who thereupon took over the interest of Pacific Wharf and Storage Company. Subsequently a corporation known as Southwestern Shipbuilding Company was formed, which took over the interest of said Emmanuel Cohen.

8. On or about December 18, 1918, Southwestern Shipbuilding Company and the City of Los Angeles, through its Board of Harbor Commissioners, entered into an agreement modifying and supplementing said lease of February 12, 1906, whereby certain property covered by said lease of February 12, 1906 was surrendered to the City of Los Angeles, and the City of Los Angeles executed a new lease to Southwestern Shipbuilding Company for a term of 30 years on certain adjacent tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro.

9. In the year 1922 the Board of Harbor Commissioners of the City of Los Angeles granted to Southwestern Shipbuilding Company permission to sublet portions of its said shipyard, which were thereupon sublet to Bethlehem Shipbuilding Corporation, Ltd. which sublease is recorded in Book 795, Page 145, Official Records of Los Angeles County.

10. Subsequent thereto Southwestern Shipbuilding Company assigned its said leasehold estate under said lease of February 12, 1906, to Bethlehem Shipbuilding Corporation, Ltd., as modified and supplemented by the agreement of lease dated December 23, 1918, between the City of Los Angeles and Southwestern Shipbuilding Company,

recorded in Book 3828, Page 188 of Official Records, Los Angeles County.

11. In the year 1924 that portion of the leasehold included in the February 12, 1906 lease which was surrendered to the City of Los Angeles by Southwestern Shipbuilding Company by agreement of December 23, 1918 as aforesaid, was on November 25, 1924 leased to General Terminal Company for private wharf purposes, in return for the surrender by said company of certain of the tide and submerged lands held by said company under lease.

12. The property thus surrendered to the City of Los Angeles by General Terminal Company was for the express purpose of permitting said City of Los Angeles to exchange said surrendered submerged lands to the United States in the so-called 1927 exchange of the 61.98 acre parcel of Reservation Point with the Federal Government, hereinafter more particularly alleged.

13. On December 17, 1930 Bethlehem Shipbuilding Corporation, Ltd. surrendered to the City of Los Angeles two certain parcels of the lands therein designated as Parcels C and D, which parcels were part of the submerged lands included within said lease of February 12, 1906. The United States had requested an exchange of said Parcels C and D as well as certain other parcels hereinafter mentioned of tide and submerged lands owned by the City of Los Angeles, in exchange for certain tide and submerged lands granted to the United States by the Act of March 9, 1897 as aforesaid, in carrying out the improvement of widening the entrance channel to a 1000 foot depth. Said agreement recited in part that:

> "Whereas the United States has undertaken and now has completed the work of widening said chan-

nel between the outer and inner harbor to a width of 1000 feet, which has required the taking of certain Bethlehem lands designated as Parcel C and D. . . . , and the City has requested Bethlehem to join with it in the adjustment and relocation of certain lines of said property by releasing the said Parcels C and D, in return for which the City will lease and demise to Bethlehem certain lands adjacent to those now held by it, being the land designated as Parcel B . . . for a term coterminus with said original lease, and also agrees to extend the term of said supplemental lease of 1918 for a like term."

(VII)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease by the City of San Pedro in the year 1905, is the following:

1. The City of San Pedro executed a lease to H. E. Huntington as trustee for Southern Pacific Railroad Terminal and Wharf Company on August 2, 1905, for a term of 50 years, to a portion of submerged lands situate in the Pacific Ocean and Bay of San Pedro lying on the westerly side of the Entrance Channel to Los Angeles Harbor. One of the conditions of the lease was that the lessee, within six months, would commence improvement of the property:

> "By constructing a bulkhead and filling in said premises with shale or other material as shall be found most expedient to reclaim the same from the ocean, . . ."

2. H. E. Huntington theretofore and on February 9, 1903, had been granted by the Board of Supervisors of Los Angeles, a franchise, pursuant to statutes of the Legislature of the State of California, to construct and maintain a wharf on a location adjacent to the tide and submerged lands covered by said lease. Said lessee was thereby obligated to expend not less than $100,000 in said work and said work to be completed within five years from the date of said lease.

3. Some filling having been done on the inshore end of the parcel of submerged land thus leased to Huntington, but no bulkheads having been constructed at the expiration of said five year period, the City of Los Angeles declared said lease forfeited on August 9, 1910, for failure to comply with the conditions thereof.

4. Thereafter the City Council of the City of Los Angeles passed its Ordinance No. 23,279(NS) on August 18, 1911, setting apart and dedicating as "Municipal Pier No. 1" the tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro theretofore leased to H. E. Huntington, which lease was theretofore forfeited by the City of Los Angeles, as aforesaid.

5. The City of Los Angeles adopted a plan for the reclamation of said Municipal Pier No. 1, including dredging of adjacent channels and depositing the spoil therefrom behind bulkheads enclosing said Huntington Concession or Municipal Pier No. 1. On March 23, 1912, the Board of Harbor Commissioners of the City of Los Angeles advertised for bids for said reclamation work.

6. On June 14, 1912, the Board of Harbor Commissioners of the City of Los Angeles made written appli-

cation to the Secretary of War for a permit to establish the necessary bulkhead lines, to perform the proposed dredging of channels, to make the necessary fill, and to modify the pier head line adjoining this area. Said application stated, in part, that

> "the land bounded by the present bulkhead line, and the prolongation thereof * * * *are tide and submerged lands owned by the City of Los Angeles,* a municipal corporation of the State of California, and are part of the lands acquired by said City under the grant made by Act of the Legislature of said state approved May 1, 1911, for uses and purposes which required that said lands be used solely for the construction, operation and maintenance thereon of utilities, structures, and appliances necessary and convenient for the promotion and accommodation of commerce and navigation."

On or about June 31, 1912, the Secretary of War granted a permit to the City of Los Angeles authorizing the dredging of the East Channel in the Outer Harbor and the disposition of the spoil therefrom within said area known as Municipal Pier No. 1, then being reclaimed.

7. Thereupon the City of Los Angeles built a bulkhead and retaining wall enclosing the tide and submerged lands thus dedicated as Municipal Pier No. 1, also bulkheaded the area, dredged the Entrance Channel, and constructed a large wharf, warehouse and docks thereon.

8. The bulkheading and filling by the City of Los Angeles of the so-called "Huntington Concession," or

Municipal Pier No. 1, was reported to Congress from time to time as the work progressed. In 1914 the Secretary of War reported to Congress, in House Document No. 896, 63rd Congress, 2d Session, page 13, that:

> "The City of Los Angeles has raised by bond issue $2,000,000 for harbor work in that part of the harbor south of the turning basin . . . Of this $2,000,000, $70,502 has been paid for filling the 'Huntington Concession' and moving the west jetty; $287,416 is pledged under contract for these works and other dredging on the east side of the 'Huntington Concession'; after setting apart $460,320 for a reinforced concrete wharf in the outer harbor . . . Briefly, the harbor work proper now in hand or in immediate prospect is the reclamation of the shore part of the 'Huntington Concession'; dredging out the east side of the 'Huntington Concession', and the construction of a 2500 foot reinforced concrete wharf on the west side of the 'Huntington Concession.' "

9. Three million dollars ($3,000,000) of bonds were voted to be issued by the electors of the City of Los Angeles on February 16, 1910. Said bonds were thereafter issued by the City of Los Angeles. The sum realized therefrom was expended for harbor improvements. The major improvement for which the sum so derived was expended was the reclamation of said former "Huntington Concession" and the erection of terminal facilities thereon. Municipal Pier No. 1 when completed constituted and now constitutes an area of reclaimed land approximately 2500 feet long and 700 feet wide, bounded on the east by the Main Channel, on the west by East Channel, and on the south by the Outer Harbor. Municipal Pier No. 1 is improved by structures and facilities, including

Warehouse No. 1, a transit shed, necessary roads, streets and other appurtenant facilities.

10. Since the completion of Municipal Pier No. 1 by the City of Los Angeles, its Board of Harbor Commissioners has been requested to grant and has granted leases, licenses and easements of substantial portions thereof to the United States. Certain of said leases, licenses and easements granted to the United States covering substantial portions of Municipal Pier No. 1 are the following:

(a) On April 9, 1917, the Secretary of the Navy accepted the use of Municipal Pier No. 1 as a temporary base for the United States Coast Torpedo Force and said Municipal Pier No. 1 was so used during World War I by the United States Navy for that purpose.

(b) On June 8, 1917, the United States Navy Department accepted on behalf of the United States the use of the southerly 600 feet of said Municipal Pier No. 1 as a Submarine Base. On said date the Navy Department also accepted the north and central sections thereof embracing 1200 feet along the East Channel, under a permit from the Board of Harbor Commissioners of the City of Los Angeles, for a Naval Training and Coast Defense Station.

(c) On June 12, 1916, the Navy Department officially designated the facilities thus granted and permitted by the Board of Harbor Commissioners of Municipal Pier No. 1 as "United States Navy Reserve Training Station, Los Angeles Harbor, San Pedro, California."

(d) The United States Navy thereupon erected fences around Municipal Pier No. 1 barring access

thereto by any one other than the United States, subject to additional uses and controls by the Board of Harbor Commissioners.

(e) After the close of World War I, the United States Navy vacated the premises used by it during the war on Municipal Pier No. 1, as requested from time to time by the Board of Harbor Commissioners of the City of Los Angeles.

(f) On January 3, 1934, the Board of Harbor Commissioners of the City of Los Angeles granted to the United States Navy Department a revocable lease permit to use berths Nos. 56, 57 and 58 on the East Channel, a part of Municipal Pier No. 1, as and for Naval Landing Purposes. Said berths Nos. 56, 57 and 58 constitute a portion of tide and submerged lands in the Pacific Ocean and Bay of San Pedro, reclaimed as a part of Municipal Pier No. 1. After the date of said grant of January 3, 1934, down to November, 1940, the United States continued to occupy, enjoy and use berths Nos. 56, 57 and 58 pursuant to said revocable lease permit and paid to the City of Los Angeles the rental due thereunder.

(VIII)

Another act of recognition on the part of the United States of the title of the State of California and of its grantee, the City of Los Angeles, to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, originating in a lease from the City of Los Angeles (and

its predecessor the City of San Pedro) to Randolph H. Miner in the year 1906, is the following:

1. The City of San Pedro entered into a written agreement with Randolph H. Miner on February 6, 1906, by the terms of which Miner agreed to reclaim and fill certain submerged lands in the Pacific Ocean and Bay of San Pedro, in consideration of which work, including the dredging of channels, Miner was to receive a lease of said reclaimed lands for a period of 50 years.

2. On February 14, 1906 a lease was duly executed by and between the City of San Pedro and Randolph H. Miner covering a parcel of submerged lands in the Pacific Ocean and Bay of San Pedro westerly of and adjacent to said parcel of land known as the "Huntington Concession," thereafter dedicated as Municipal Pier No. 1, as aforesaid.

3. On May 12, 1906 Randolph H. Miner filed an amended application with the War Department for a permit to construct a bulkhead and retaining wall in the Pacific Ocean and Bay of San Pedro and to fill solid behind said bulkhead the premises demised by the City of San Pedro, as aforesaid. A permit was issued to Randolph Miner on July 25, 1906.

4. Randolph Miner assigned said lease to Outer Harbor Dock and Wharf Company, a corporation, shortly thereafter.

5. On March 23, 1907 the Validation Act of the Legislature of the State of California, approved March 23,

1907 (Stats. 1907, p. 987) as aforesaid, validated and ratified said lease of February 14, 1906.

6. Outer Harbor Dock and Wharf Company immediately commenced the work of improvement, constructed a sea-wall, bulkhead and filled in the area of the demised premises and dredged channels in connection therewith, erected wharves and piers thereon, at a total cost to said company in excess of $1,300,000. The area thus reclaimed by said company is approximately 132 acres of submerged lands.

7. On July 23, 1907 the City of San Pedro and Outer Harbor Dock and Wharf Company entered into an amended lease conforming the description of the demised premises with the area covered by said permit from the War Department.

8. Thereafter the City of Los Angeles brought suit against Outer Harbor Dock and Wharf Company to recover possession of all said lands, but judgment was rendered against the City and in favor of Outer Harbor Dock and Wharf Company on April 21, 1919, confirming said lease, within the lines of the original description in the lease of February 14, 1906. A certain controversy still remaining between the City of Los Angeles and Outer Harbor Dock and Wharf Company, a settlement agreement fixing the rights of the parties together with a permit or lease was entered into under date of April 4, 1922, establishing rental schedules to be paid to the City by said lessee.

9. These improvements of the submerged lands in the Pacific Ocean and Bay of San Pedro were duly reported to Congress by the Secretary of War from time to time. One of such reports was rendered in 1914, in House Document No. 896, 63rd Congress, 2d Session, pages 43 and 47, as follows:

> "The Outer Harber Dock & Wharf Co. has dredged in the east and west channels to 30-foot depth (to 35-foot depth for 1,500 feet in front of warehouses in the east channel). Total yardage (including dredging done in Watchorn Basin) 2,564,949 cubic yards; areas reclaimed, 132 acres; 5,400 linear feet of quay wall wharf completed and 2,400 feet additional partly constructed; 1,150 feet of timber wharf constructed; two warehouses built."

Said Secretary further reported to Congress, that:

> "But the outer harbor of 20 years ago was an open roadstead. Since then the United States has built the Walker Board breakwater, at a cost of $2,830,400; and finding that this did not quiet the protected area sufficiently has expended $208,296 in closing the 1,800-foot gap between the original breakwater and the shore. These expenditures made possible the construction of a deep-water port close to the open sea, or as the act making the first appropriation for the breakwater expressed it, 'a deep-water harbor for commerce and of refuge.' Work done by the Outer Harbor Dock & Wharf Co. is described in paragraph 10. It has cost to date, it is said, more than a million and a quarter dollars. The

City of Los Angeles has begun the construction of a similar terminal, and has expended money for land, etc. as a part of an elaborate plan which contemplates ultimately the development of all of its extensive holdings in the outer harbor. In recognition of the work done by the Outer Harbor Dock & Wharf Co.'s terminal and that about to be undertaken on the city terminal, the United States appropriated $327,250 in 1912 to provide 35 feet of water in the space between that contour of depth and the slips of these terminals."

10. Substantial portions of the Outer Harbor Dock & Wharf Company's leasehold property and improvements have been leased and used by the United States of America and several of its departments and agencies, particularly during World War I and World War II.

(IX)

The portions of submerged lands lying in the Pacific Ocean and Bay of San Pedro leased to the San Pedro, Los Angeles and Salt Lake Railroad Company, Pacific Dock & Wharf Company, H. E. Huntington, and Outer Harbor Dock and Wharf Company, as aforesaid, which areas were reclaimed, improved and used, parts of which have been granted to the United States of America as aforesaid, are depicted on that portion of the map prepared by the War Department and transmitted to Congress attached to House Document No. 896, 63rd Congress, 2nd Session, a copy of which portion is as follows:

(X)

Another act of recognition by the United States of America of the title of the City of Los Angeles, as grantee of the State of California, in and to tide and submerged lands in the Pacific Ocean and Bay of San Pedro, resulting from an exchange of a 9.75 acre parcel of submerged lands granted to the United States by the Act of March 9, 1897, hereinabove referred to, surrounding Deadman's Island, for an equivalent area of submerged lands owned by the City of Los Angeles, in the years 1912-1915, is the following:

1. In the River and Harbor Act of July 25, 1912, Congress authorized the Secretary of War to grant to the City of Los Angeles a 9.75 acre parcel of submerged lands adjoining the Military Reservation of Deadman's Island. Said 9.75 acre parcel had been previously acquired by the United States by grant from the State of California through the Act of its Legislature approved March 9, 1897, as aforesaid. Said 9.75 acre parcel was situated westerly of the pierhead line of Los Angeles Harbor as established by the Secretary of War on July 29, 1908, and lay in the widened Entrance Channel then in contemplation or under construction. Said Act of Congress of July 25, 1912 authorized the Secretary of War to grant said 9.75 acre parcel to the City of Los Angeles in exchange for a grant by the City of Los Angeles to the United States of an approximately equal area of 9.75 acres of submerged lands owned by the City of Los Angeles lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation (Fort McArthur).

By said Act approved July 25, 1912, Congress provided for said 9.75 acre exchange in the following language:

> "That the Secretary of War be and he is hereby authorized to grant to the City of Los Angeles, California, all of the right, title and interest of the United States in and to that portion of the submerged lands around the military reservation on Deadman's Island *dcquired under act of the Legislature of the State of California* approved March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor between Station 15 as established by the Secretary of War (July 29, 1908) and Station 12 as established May 31, 1911, containing an area of 9.75 acres more or less, in exchange for the grant by said City to the United States, for use for public purposes, of an approximately *equal area of submerged lands of said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of 950.53 feet on the West Channel, and lying adjacent and southerly of the submerged lands in front of the San Pedro military reservation."

The Congress of the United States did thereby recognize and assert the title of the State of California and the City of Los Angeles in and to the tide and submerged lands in the Pacific Ocean and Bay of San Pedro.

2. Pursuant to the charter of the City of Los Angeles, by Ordinance No. 25040 (NS) approved May 8, 1912, there was submitted to the qualified electors of the City of Los Angeles at a special election held May 28, 1912, the proposition of authorizing the granting by the City of Los Angeles to the United States of a parcel of submerged lands situated in the outer harbor having a frontage of 950.53 feet lying to the west and southerly in front of the San Pedro Military Reservation, contain-

ing 9.75 acres, in exchange for the grant to the City of Los Angeles by the United States of a parcel of submerged land around the Deadman's Island Military Reservation lying westerly of the pierhead line, likewise containing 9.75 acres. The electors of the City of Los Angeles at said election voted in favor of authorizing said grant by the City of the United States.

3. The Legislature of the State of California passed an act approved May 28, 1913 (Stats. 1913, Ch. 230), authorizing municipal corporations, within whose boundaries are located tide and submerged lands acquired from the State of California, to grant portions thereof to the United States for public purposes, providing such grant be authorized by vote of a majority of the electors of such municipal corporations voting on the question of authorizing such grant; and likewise confirming and declaring legal any case where a propositon to grant such lands to the United States by a municipal corporation had, prior to the passage of such act, been authorized by such vote.

4. On August 16, 1913 the City Council of the City of Los Angeles passed Ordinance No. 28144 (NS) thereby granting to the United States of America the 9.75 acre parcel of submerged lands having a frontage of 950.53 feet on West Channel adjacent to and southerly of the submerged lands in front of San Pedro Military Reservation.

Said Ordinance recited that said grant was made in consideration of the exchange for the grant to the City of Los Angeles by the United States of its title to the 9.75 acre parcel of submerged land around the Military Reservation on Deadman's Island containing an area of approximately 9.75 acres.

Said Ordinance authorized its Mayor, on behalf of the City, to execute a deed granting to the United States the lands therein described upon delivery to the City by the United States of a deed executed by the proper officers of the United States granting to the City said 9.75 acre parcel.

5. The United States required the City to furnish the United States with an abstract of title to the 9.75 acres of submerged lands to be conveyed to the United States in the exchange aforesaid. By letter dated December 12, 1912 the United States District Engineer addressed the Board of Harbor Commissioners of the City of Los Angeles setting forth the provisions of the River and Harbor Act approved July 25, 1912 authorizing exchanges aforesaid, and then stated that:

> "Pursuant to this authority I forward herewith a draft of conveyance to the United States, which has been received from the Chief of Engineers, U. S. Army, with the following instructions:
>
> > "1. The accompanying draft of conveyance to the United States should be presented to the proper officials of the City of Los Angeles for execution and when executed these papers should be returned to this office *with abstract of title and all papers necessary to permit the Attorney General to pass upon the title to be conveyed.*
> >
> > "2. Upon receipt of the *favorable opinion* of the Attorney General as to the title to be conveyed to the United States recommendation will be made to the Secretary of War for the execution by him of the deed of conveyance to the City of Los Angeles . . ."

6. Pursuant thereto the City of Los Angeles obtained an abstract of title from a title company engaged in the business of abstracting titles in the City of Los Angeles, and furnished the same to the United States, through its United States Engineer office at Los Angeles. Said abstract of title was reviewed by the United States Attorney for the Southern District of California. The United States Attorney requested additional information with reference to the details of the title prior to rendering his opinion as to the status of the title in accordance with the Act of Congress requiring a favorable opinion from the United States Attorney prior to construction of improvements on property acquired by the United States.

7. The United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles on May 11, 1915 relative to the title of the City to the lands to be thus exchanged and stated that in order for the title to said lands to be shown in the City of Los Angeles to the satisfaction of the United States Attorney General it would be necessary to:

> "First, procure and present a survey from the Surveyor General of California to the effect that said lands had never been conveyed by the State prior to the conveyance thereof to the City of Los Angeles, and second, a certificate from the city clerk to the effect that said lands had never been conveyed by the said city and that there is no record of any such conveyance in the office of the city clerk other than the one to the United States government. Third, a further certificate of the City Abstractor *tracing the title from the State through the City* to the United States government and showing clear of any claim, encumbrance, or prior conveyance, and *a showing as to how the State came into possession of the land.*"

8. Pursuant to such communication of May 11, 1915, the City of Los Angeles furnished the certificates of title as requested. In addition the City of Los Angeles advised the United States Attorney in writing that *the State of California came into possession of the said land by virtue of her sovereignty and under the Act of Admission of September 9, 1950.*

9. On the foregoing showing the Attorney General of the United States passed his opinion that the City of Los Angeles held title to the tide and submerged lands within her boundaries then being conveyed and approved said title for transfer to the United States, as hereinbefore alleged. On October 16, 1915, the United States Department of Justice, through the office of the United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles in writing, stating in part as follows:

> "I have to advise that *the Attorney General has passed the title of the City of Los Angeles to the 9.75 acres* of land in the outer harbor at Los Angeles, California, which the City of Los Angeles had been heretofore authorized to transfer to the United States government in exchange for a like amount of land lying on the westerly side of the entrance channel to the inner harbor of Los Angeles, *and has found the title good.*
>
> "Pursuant to his instructions, a deed from the City of Los Angeles to the United States has been placed of record and I understand that the actual exchange of the property took place sometime ago."

10. The mayor of the City of Los Angeles, on behalf of the City of Los Angeles, executed a deed dated August 16, 1913, granting to the United States of America said

9.75 acre parcel of submerged lands lying adjacent to and southerly of the submerged lands in front of San Pedro Military Reservation, as aforesaid. Said deed recited that it was made pursuant to the Act of Congress approved July 25, 1912, as aforesaid. The granting clause thereof reads in part as follows:

> "Now, therefore, in consideration of the conveyance by the Secretary of War to the City of Los Angeles, California, of all the right, title and interest of the United States in and to that portion of *the submerged land* around the military reservation of Deadmans Island *acquired by the United States under act of the Legislature of the State of California approved March 9, 1897,* which lies west of the westerly pierhead line of Los Angeles Harbor between station fifteen, containing an area of nine and seventy-five one-hundredths acres, more or less, and of the sum of One Dollar, the receipt whereof is hereby acknowledged, the City of Los Angeles, a municipal corporation of the State of California, hereby grants and conveys to the United States of America, its successors and assigns, all that portion of the *submerged land belonging to said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of nine hundred and fifty and fifty-three one hundredths feet on West Channel, and lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation, the lands hereby conveyed being situate in Los Angeles County in the State of California and being included within metes and bounds as follows: * * *"

Said deed was duly recorded at the request of the United States District Engineer's Office on October 15, 1915, in Book 6136, page 181, of Deeds in the Office of the County Recorder of Los Angeles County, California.

11. Concurrently with the delivery of the deed mentioned in the last paragraph hereof, the United States Secretary of War, on behalf of the United States, pursuant to said Act of Congress of July 25, 1912, executed and delivered a deed granting and conveying to the City of Los Angeles the title of the United States in and to that portion of the submerged lands around the Military Reservation at Deadman's Island granted to the United States by the Act of the California Legislature on March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor, containing 9.75 acres of submerged lands. Said deed is dated September 3, 1915, and recites that the Secretary of War was authorized by the Act of July 25, 1912, to make such grant in exchange for the aforesaid grant from the City of Los Angeles to the United States of an equal area of submerged land. Said deed further recites that the city had conveyed its area to the United States and that the title to said land so conveyed to the United States had been approved by the Attorney General of the United States, reciting, in part, as follows:

> "Whereas, the City of Los Angeles, a municipal corporation of the State of California, has by deed duly executed and acknowledged, conveyed to the United States of America an approximately equal area of submerged land of said City in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of nine hundred and fifty and fifty-three one hundredths feet on West Channel, and lying adjacent to and southerly of the submerged lands in front of the San Pedro Military Reservation, as provided in said Act of Congress; ***and the title to the land so conveyed to the United States has been approved by the Attorney General of the United States.***"

The granting clause of said deed then specifies that the lands granted to the City are those submerged lands acquired by the United States from the State of California under the Act of March 9, 1897, reading, in part, as follows:

> "Now, Therefore, in consideration of the premises and of the sum of One Dollar, receipt whereof is hereby acknowledged, I, Lindley M. Garrison, Secretary of War, hereby grant and convey unto the said City of Los Angeles, California, its successors and assigns, all the right, title, and interest of the United States in and to that portion of the *submerged land* around the military reservation of Deadmans Island, in the County of Los Angeles, and State of California, *acquired under act of the Legislature of the State of California, approved March 9, 1897,* which lies west of the westerly pierhead line of Los Angeles Harbor between station fifteen, as established by the Secretary of War July 29, 1908, and station twelve, as established May 31, 1911, and containing an area of nine and seventy-five one-hundredths acres, more or less."

Said deed was recorded at the request of the City of Los Angeles on October 22, 1915, in Book 6124 of Deeds, page 335, in the Office of the County Recorder of Los Angeles County, California.

(XI)

A further act of recognition on the part of the United States of America of the title of the City of Los Angeles, as grantee from the State of California, of a portion of the submerged lands in the Pacific Ocean and Bay of San Pedro, consists of a second exchange in the years 1925-1927 by the United States of a 61.98 acre tract of sub-

merged lands which it acquired from the State of California by the Act of the California Legislature of March 9, 1897, as aforesaid, for a grant of a like acreage of submerged lands from the City of Los Angeles, as follows:

1. In the year 1923, it was proposed to widen the Entrance Channel to the Los Angeles Inner Harbor to a width of approximately 1000 feet. In order to do so, it was necessary to remove Deadman's Island, which at that time stood in the way to the approach to such a widened Entrance Channel. The United States proposed that in lieu of its land on and around Deadman's Island which it would lose as a result of the widening of the Entrance Channel, the City of Los Angeles deed to the United States an equivalent area of submerged lands lying in the Pacific Ocean and Bay of San Pedro easterly of Deadman's Island, which area the United States proposed to reclaim and, with other areas granted by the State of California by the Act of March 9, 1897, as aforesaid, to form into proposed Reservation Point for the housing of quarantine, Coast Guard, and other governmental facilities.

2. In his report to the Chief of Engineers, dated April 15, 1924, the United States District Engineer at Los Angeles reported and recommended (House Document No. 349, *supra,* at pages 38-39), in part, as follows:

> "16. *Reclaiming Government land at Reservation Point.—By act of legislature, the State of California granted to the United States parcels of land extending from high-water mark out to 300 yards beyond low-water mark,* lying adjacent and contiguous to such lands of the United States in California as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved

by the United States for any military or naval purposes or for defense. *The United States has claim to land of approximately 36 acres around Reservation* Point and lying easterly of the probable future 1,000-foot channel.

"17. Provision should be made at this time for modifying the boundaries of the present Government holdings, so an exchanged area as indicated below may be deeded to the United States. Such modification would also have the effect of providing a Government reservation rectangular in plan instead of being bounded by numerous arcs. Before reclamation work is begun, the *city should grant to the United States title to the new area in lieu of the present legislative grant.* I am informed that the city is willing to make this exchange if desired by the United States."

The Board of Engineers for Rivers and Harbors reviewed the reports of the District Engineer and the above recommendation for widening the entrance channel and exchanging parcels with the City of Los Angeles, and reported to the Chief of Engineers under date of May 6, 1924, and recommended (House Document 349, *supra,* page 11), in part, as follows:

"In this connection the board points out that the widening of the entrance channel from 550 to 1,000 feet, as recommended above, will involve cutting away a portion of the present holdings of the Government at Reservation Point. Irrespective, therefore, of what action is taken on the proposal for reclamation, *local interests should transfer to the United States an area adjoining* the existing Federal holdings, equal to that cut away, this to be a condition precedent to the widening of the channel."

In its ultimate recommendations, the said Board of Engineers for Rivers and Harbors, in its said report of May 6, 1924 (House Document No. 349, *supra,* at page 16), recommended, among other things, that the existing project for the improvement of Los Angeles Harbor be modified to provide, among other things, for widening the entrance channel to 1,000 feet with a depth of 35 feet

> ". . . provided that local interests shall take the following action as items of cooperation:
>
> "(a) *Cede to the United States,* in lieu of that portion of the military reservation at Reservation Point which will be required for widening the main entrance channel, *an equivalent area to the east,* adjoining the present Federal holdings."

The Chief of Engineers, in his report and the Secretary of War, in his report to the Committee on Rivers and Harbors of the Congress, under date of June 2, 1924, made the same recommendation with respect to widening the entrance channel and exchanging the Government lands for submerged lands of the City of Los Angeles.

2. The River and Harbor Act approved by Congress on March 3, 1925, adopted the foregoing report submitted in said House Document No. 349, among other things, for the widening of the Main Entrance Channel of Los Angeles Harbor upon condition that the City of Los Angeles cede to the United States in lieu of that portion of the Military Reservation at Reservation Point required for widening the main entrance channel, an equivalent area to the east adjoining the present Federal holdings.

3. Pursuant to the Charter of the City of Los Angeles and Ordinance No. 54673, approved April 19, 1926, there was submitted to the qualified electors of the City of Los Angeles at a special municipal election held on April 30,

1926, the proposition of authorizing the grant by the City of Los Angeles to the United States of a 61.98-acre parcel of tide and submerged lands lying adjacent to and easterly of Reservation Point (formerly Deadman's Island Military Reservation). The electors of the City of Los Angeles, at said election, authorized such grant by the City of Los Angeles to the United States.

4. On August 4, 1926, the City Council of the City of Los Angeles passed its Ordinance No. 55639, thereby granting said 61.98-acre parcel of tide and submerged lands to the United States of America and thereby authorized the mayor of the City of Los Angeles, on behalf of the City, to execute a deed granting to the United States said 61.98-acre parcel of tide and submerged lands. Said Ordinance recited, among other things, the 1897 grant to the United States by the Legislature of the State of California of the submerged lands around Deadman's Island, reading, in part, as follows:

> "WHEREAS, pursuant to act of the legislature of the State of California approved March 9, 1897, Statutes 1897, page 74, the tide and *submerged lands owned by said state* within a distance of 300 yards beyond low water mark surrounding Deadman's Island or Reservation Point were ceded by said state to the United States of America to be used for military, naval or defense purposes only so long as said island should be held by said United States for such purposes; . . ."

Said Ordinance further recited the automatic divestment of title of the United States to said submerged lands around Reservation Point, pursuant to the Act of March 9, 1897, upon abandonment by the United States of said

area for military or naval purposes, reading, in part, as follows:

> "WHEREAS, the widening of said main channel will result in the dredging away of said Reservation Point which will become a part of said widened channel, and *the United States will thereby ipso facto become divested of title to the tide and submerged lands surrounding Reservation Point acquired pursuant to said Act* of the legislature of the State of California approved March 9, 1897, by reason of the same being abandoned for military, naval or defense purposes, and the deed from the City of Los Angeles authorized at said special municipal election and by this ordinance is required for the purpose of conveying to the United States a rectangular area lying just easterly of the new main channel in lieu of the lands now held by said United States which will be surrendered in the widening of said main channel; . . ."

Said Ordinance also recited the authorization from the Legislature of the State of California approved May 28, 1913, authorizing municipal corporations to which tide and submerged lands had been granted by the State of California, to make certain grants thereof to the United States, reading, in part, as follows:

> "WHEREAS, the Legislature of the State of California, at the Fortieth Session of said Legislature, beginning January 6, 1913, passed an act which authorizes and empowers any municipal corporation of said state to which tide lands and submerged lands,, situated within the limits of such municipal corporation, had been granted by the State of California, to grant portions of such lands in accordance with the terms of said act, to the United States for public purposes of the United States; and which said act was

approved by the Governor of California May 28th, 1913, and went into effect August 11th, 1913; . . ."

Said Ordinance thereupon granted to the United States "that certain parcel of tide and submerged lands situate in that portion of Los Angeles Harbor known as the outer harbor [particularly describing said tract of submerged lands] reserving to the City of Los Angeles the right to use, for public highway purposes, an area 100 feet wide and 1000 feet long across the northerly end of said parcel contiguous to the northerly boundary thereof, together with the right to maintain and operate public ferry landings at each end of said highway; containing 61.98 acres, exclusive of said area 100 feet wide and 1000 feet long."

5. On August 4, 1926, the City of Los Angeles, by its mayor, executed a grant deed to the United States of America, granting and conveying to it said 61.98-acre parcel, said deed reading, in part, as follows:

". . . The City of Los Angeles . . . hereby grants and conveys to the United States of America that certain parcel of tide and submerged land *belonging to the City of Los Angeles* . . . [describing said parcel and reserving the highway and ferry landing areas]."

6. Under date of September 6, 1927, the United States of America accepted in writing said deed from the City of Los Angeles by appending its acceptance thereof in writing as a part of said grant deed, which acceptance reads, in part, as follows:

"Dated September 6, 1927

"The within deed, conveying to the United States of America certain tide and submerged lands situated at Los Angeles Harbor, in the City of Los Angeles, California, being a portion of the E.½ of Sec. 19 and W½ of Sec. 20, T. 5 S., R. 13 W., San Bernardino, B & M, authorized by River and Harbor Act of March 3, 1925, 68th Congress, House Document 349, *be and the same is hereby accepted on behalf of the War Department of the United States of America.*

C. P. GROSS,
C. P. GROSS,
Major, Corps of Engineers, District Engineer."

Said deed was recorded on September 15, 1926, in Book 7033, page 279, Official Records of Los Angeles County, California.

7. The title conveyed by said deed from the City of Los Angeles to the United States, covering said 61.98-acre parcel of submerged lands, as aforesaid, was reviewed by the United States Attorney, in advance of its acceptance by the United States, as aforesaid, and said United States Attorney rendered his written opinion to the effect that the City of Los Angeles was the owner of the submerged lands described in said deed and thereby conveyed to the United States, in accordance with his duty under the Act of Congress requiring a favorable title opinion from the United States Attorney prior to the acquisition of title by the United States.

8. At the request of the United States a certificate dated February 4, 1927, was prepared by the Official Searcher of Titles for the City of Los Angeles certifying that he had searched the records of Los Angeles County,

found no transfer of the parcel of tide and submerged lands containing said 61.98 acre tract to be deeded to the United States, and there was no claim or encumbrance of any kind against said parcel. Under the same date a certificate of the County Clerk of Los Angeles County was prepared certifying to the proceedings authorizing the execution and delivery of a deed granting to the United States said 61.98 acre parcel and certifying there was no record in his office of any prior conveyance by the City of Los Angeles of said parcel. Said certificates, together with exact copies of all the proceedings leading up to and including the authorizations to the execution of said deed and also all proceedings in connection with the 1912-1915 exchange of said 9.75 acre parcel, were delivered to the United States Attorney at Los Angeles and receipt by him was acknowledged on March 8, 1927.

9. On March 8, 1927, the United States Attorney at Los Angeles requested that the City of Los Angeles obtain a certificate of title to the 61.98 acre parcel of submerged lands to be transferred to the United States. In response thereto the City Attorney of the City of Los Angeles addressed a communication dated March 17, 1927, to the United States Attorney in Los Angeles explaining that a certificate of title procured from a commercial title company would not furnish the necessary data for the United States Attorney to pass upon the title to the City of Los Angeles to said submerged parcel and explained the reasons therefor, said letter reading, in part, as follows:

> "On May 8, 1912, the voters authorized the grant to the United States of a parcel of land containing 9.75 acres adjacent to the lower reservation at Fort MacArthur, in exchange for which the government released to the city an equal area on the west side of the main entrance channel lying within the 300 yard

circle around Deadmans Island which the State of California ceded to the federal government under authority of the act of the legislature approved March 9, 1897 (Statutes 1897, page 74). This change was finally effected by the exchange of deeds, and I enclose herewith copy of letter written by United States Attorney Robert O'Connor under date of October 16, 1915, advising us that the Attorney General had passed upon the title to the tidelands deeded to the government and had found the same good. At that time a transcript of proceedings and certificates identical in form with those recently submitted to you in connection with the pending grant was forwarded through Col. C. R. McKinstry, engineer then in charge of this district, and no certificates of title were required either by the government or the city. I was in this office at that time, and in our report submitting the transcript and certificates we made the following statements:

> "Deadmans Island is a part of the original government domain in California. It was never included in any Spanish or Mexican grant and was never granted by the United States to any one, but has been reserved for purposes of public defense and other purposes of the United States by the federal government. In 1897 an act was passed by the legislature of California relinquishing or *ceding to the United States the title of the state to tidal lands adjacent to the lands held by the United States for military purposes, for a distance of 300 yards out from the low tide line. Such tidal lands were owned by the State of California by virtue of her sovereignty, and were acquired by the State of California upon her admission into the Union.* The submerged lands around Deadmans Island be-

came, therefor, the property of the United States under the act of 1897 (Statutes 1897, page 74). There is absolutely nothing of record with reference thereto other than the act referred to, which was approved by the governor of California March 9, 1897. I have gone into the matter quite thoroughly and I do not find that the title of the United States to the tidal lands surrounding Deadmans Island, and for a distance of 300 yards out from the low tide line of the island, has ever been questioned. * * *

"With reference to the title of the City of Los Angeles to the submerged lands included within the rectangular area lying easterly of Deadmans Island which the government proposes to reclaim and use for general public purposes, *the rectangle, as you know, includes a portion of the submerged lands ceded to the United States for military purposes under the 1897 act* referred to above lying within 300 yards of the low tide line of the Island. I have in my files a copy of the *map recorded by the federal engineer accepting and claiming the submerged land surrounding Deadmans Island under authority of the act of 1897,* so that there can be no question but what at that time *the government was satisfied with the state's authority to cede the submerged lands under the 1897 act.*

"The rectangular area proposed to be deeded to the government includes *submerged land now belonging to the City* in addition to that which is included within the 300 yard line mentioned above, and the transcript and certificate sent you show that *the State of California granted to the City of Los Angeles May 1, 1911, all of the right, title and interest held by the state by virtue of its sovereignty in and to*

this particular submerged land as well as all other tide and submerged lands within the limits of the city. These lands were ceded by the Mexican government to the United States pursuant to the treaty with Mexico after the war of 1845 with that country, and it is a *matter of tideland law and not of statute law that the United States held title to tide and submerged lands in trust for the benefit of the states which were later formed along its boundaries, so that upon the admission of California to the Union in 1850 the title to these lands was vested in the state by virtue of its sovereignty until granted to the City of Los Angeles in 1911.* There being, therefore, no record of patents, conveyances or transfers involved as touching these lands consequently there is no chain of title of record. It is a matter of law and not of record that these tide and submerged lands came to the City of Los Angeles from the Mexican government through the United States and the State of California. Under the circumstances I think you will agree with me that a certificate of title, as the same is customarily used in the business world to clearly indicate that the records in the County Recorder's office show the title to certain property to be vested in certain persons, could not be used in this case to prove title. It being a matter of legal opinion, we have therefore submitted to the government, through you, all documents necessary to show the title in the City of Los Angeles and its authority to make the grant to the United States.

"You are probably familiar with the reason for including in the deed of the city all of the land within the rectangle which includes a portion of that now held by the United States under the Act of 1897, which is done because the grant by the state under the 1897 act confined the use of the government to

military purposes and it being its plan to remove Deadmans Island, which would result in the release of the tide and submerged lands acquired for military purposes under the 1897 act, the city is therefore including within its grant all of the land within the rectangular area for all public purposes of the United States.

"I trust that with this report and the papers you already have the Attorney General will be in a position to approve the acceptance of the proposed deed the same as was done in the former transfer of the 9.75 acre parcel.

Yours very truly,

JESS E. STEPHENS,
City Attorney

By CLYDE M. LEACH (Signed)
Assistant City Attorney."

10. The Attorney General and the United States Attorney at Los Angeles were satisfied with the title information thus furnished by the City Attorney of the City of Los Angeles. On June 30, 1927, the Attorney General of the United States, William D. Mitchell, passed his written opinion to the Secretary of War finding title to the 61.98 acres parcel of submerged land to be in the City of Los Angeles, said opinion reading in part as follows:

"I have the honor to report that I have examined the abstract of title to 61.98 acres of land in the City of Los Angeles, County of Los Angeles, which are proposed to be purchased by the Government, under the provisions of the River and Harbor Act of March 3, 1925, 68th Congress, Docket # 349, the total consideration being $1.00.

* * * * * * * *

"The abstract contains 29 pages and was certified to by J. T. Saunders, Official Searcher of the City of Los Angeles, with certificate attached, dated February 4, 1927, which certificate is satisfactory. A map of the land made by the engineers of the War Department accompanies the abstract.

"From an examination of the abstract, *I find the title to said land in the City of Los Angeles.* When the undated deed accompanying the abstract has been signed by the City of Los Angeles, acknowledged according to the laws of the State of California, and placed of record, and another certificate has been attached to the abstract showing the recording of said deed, the payment of all taxes, the examination of the record brought down to a date subsequent to the recording of the deed, that nothing has been done to affect the title to this land since the date of making the present certificate, and the abstract shall have been returned to me, I will then approve the title.

"The abstract and related papers are enclosed herewith.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General."

11. Pursuant to the requirement of the Attorney General of the United States as aforesaid a supplemental certificate was prepared by the Official Searcher of Records of the City of Los Angeles under date of September 19, 1927, and was furnished to the United States Attorney.

12. Portions of the reclaimed submerged lands which were released to the City of Los Angeles by Los Angeles and Salt Lake Railroad Company in the year 1921, as aforesaid, and by Bethlehem Shipbuilding Corporation,

Ltd., in the year 1925, as aforesaid, were included in and were a part of the submerged lands, filled or unfilled, granted to the United States by the City of Los Angeles by said deed dated August 4, 1926, as aforesaid.

(XII)

The United States of America asserted and declared in the year 1925 that the City of Los Angeles was the owner of the submerged lands in the Pacific Ocean and Bay of San Pedro in front of Terminal Island, which were planned to be reclaimed with materials dredged from the Inner Harbor in the improvement thereof as planned and approved by Act of Congress of March 3, 1925.

1. The United States District Engineer at Los Angeles reported to the Chief of Engineers under date of April 15, 1924, in recommending the extension of the breakwater in front of Terminal Island, upon condition that the City of Los Angeles and the City of Long Beach contribute toward the cost of such breakwater extension for the reason that said cities would receive a benefit in the protection by the breakwater of the submerged lands proposed to be reclaimed and asserted that the cities would be the owners thereof, saying (House Document No. 349, *supra*, pp. 46-47) that:

> "Los Angeles would secure better protection for the entrance to its main channel, which also would permit widening that channel to 1,000 feet opposite Reservation Point; it would also receive protection for a large area of valuable land reclaimed on the south side of Terminal Island, ***and to which the city would have title.*** . . . Land on the south shore of Terminal Island can be reclaimed very cheaply, as incidental to dredging operations in the inner harbor. Between Fish Harbor and the Silt Diversion

Channel, under protection of the breakwater extension, perhaps 1,000 acres could be so reclaimed. A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1,000 acres. *Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.*"

2. Said report of the United States District Engineer was adopted by the Chief of Engineers who, in turn, forwarded said report to Congress as House Document No. 349, *supra*. Congress adopted the recommendations of the District Engineer and Chief of Engineers contained in said House Document No. 349 and passed its Act of March 3, 1925, making appropriations for the improvements as thus recommended for the Los Angeles Outer Harbor and Inner Harbor as well as for the Long Beach Harbor, as hereinabove alleged.

(XIII)

Another act of recognition on the part of the United States of the title of the City of Los Angeles in and to the submerged lands in the Pacific Ocean and Bay of San Pedro, in connection with a so-called "147-acre Tract" (sometimes referred to as "146-acre Tract," also as a "166-acre Tract," also as the "171-acre Tract," and sometimes as the "Submarine Base Site"), is the following:

1. Pursuant to the direction of an Act of Congress requiring investigation and report concerning the establishment of submarine and aviation bases on the Pacific Coast and elsewhere in the United States, the Commission on Navy Yards and Naval Stations filed its report with the President of the United States on January 31, 1917, which report the President transmitted on February 9, 1917, to the Congress of the United States, as reported

in House Document No. 1946, Volume 3, 64th Congress, Second Session.

2. Said Commission on Navy Yards and Naval Stations examined the Los Angeles Harbor as a potential site for a Submarine Base. The City of Los Angeles offered 8 different tracts of tide and submerged lands in its Outer Harbor and Inner Harbor for consideration by said Commission and for selection by and transfer to the United States by the City. In its report to the President and to Congress with respect to the title of said eight parcels of tide and submerged lands in the Outer and Inner harbor of Los Angeles, said Commission reported these titles to be vested in the City of Los Angeles, stating that:

"3. Eight sites were offered for consideration by the authorities of the city of Los Angeles. These sites are indicated on a map of the port of Los Angeles, attached at Appendix C5. They are also described generally in the booklet on Los Angeles Harbor, attached as Appendix C4. Of these eight sites, *the titles of Nos. 1, 3, 4, and 8 are vested in the City of Los Angeles by cession from the State of California;* Nos. 5, 6 and 7 are, in part, claimed by the city, but are much cut up by private claims. Parcel No. 2, containing 39 acres is already in the possession of the United States Government, *except a small triangular corner consisting of about 6 acres, title to which is vested in the City of Los Angeles.*

"31. Each of the sites was inspected by the commission and, by gradual elimination, No. 1 was found to possess, in a degree higher than any of the others, characteristics which would permit its use as a training and operating base for submarines, and an operating base for aeroplanes; and, also as a possible location for a large dry dock and emergency repair plant for ships of the larger size, should the

occasion ever arise when same should be considered necessary. *Site No. 8, while possessng certain advantages for an aviation operating base, is very much exposed to the sea,* and is, therefore, impracticable for development as a submarine base. Sites Nos. 6 and 7 are not satisfactory as to title and are, moreover, approached only through the inner harbor, being shut off from the sea by privately owned property and railroad tracks. Even if these sites were selected and the intervening property acquired, they would still be subject to exposed conditions similar to site No. 8. Site No. 5 is subject to the same disadvantages as to title as Nos. 6 and 7. It is also only possible to approach this site through the inner harbor, which makes its use practically prohibitive for hydroplanes and undesirable as a submarine base. Sites Nos. 3 and 4 are well located as to protection from wind and sea but are only susceptible of approach through the inner harbor, a disadvantage which has already been commented upon. Site No. 2 is very much exposed to the sea and regarded as unsuitable in every respect for development as a submarine base or aviation operating base. A portion of it, moreover, has already been transferred to the Treasury Department for use as a quarantine station site and another portion has been reserved for the installation of a seacoast battery." (H. D. No. 1946, *supra,* pp. 22-23.)

Said Parcels Nos. 1 to 8, described in said Report, are located as follows:

(i) Parcel No. 1 referred to in the quotation above is the "166-acre" tract of submerged lands

finally selected by this Commission and recommended for the Submarine Base Site and lies in the Pacific Ocean and Bay of San Pedro immediately adjoining the government breakwater and West Channel in the Outer Harbor.

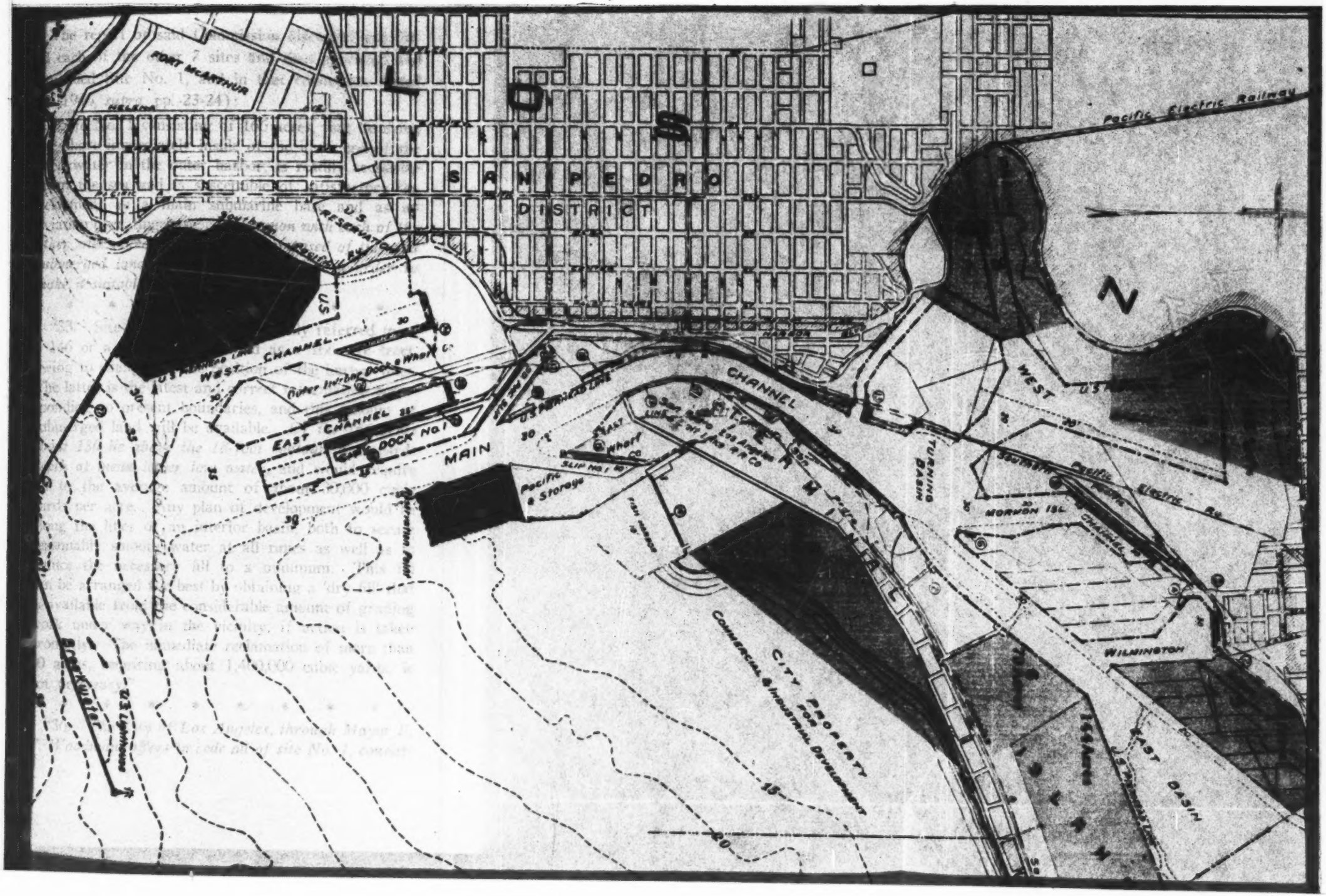
(ii) Parcels Nos. 3 and 4 are located in the West Basin in the Inner Harbor.

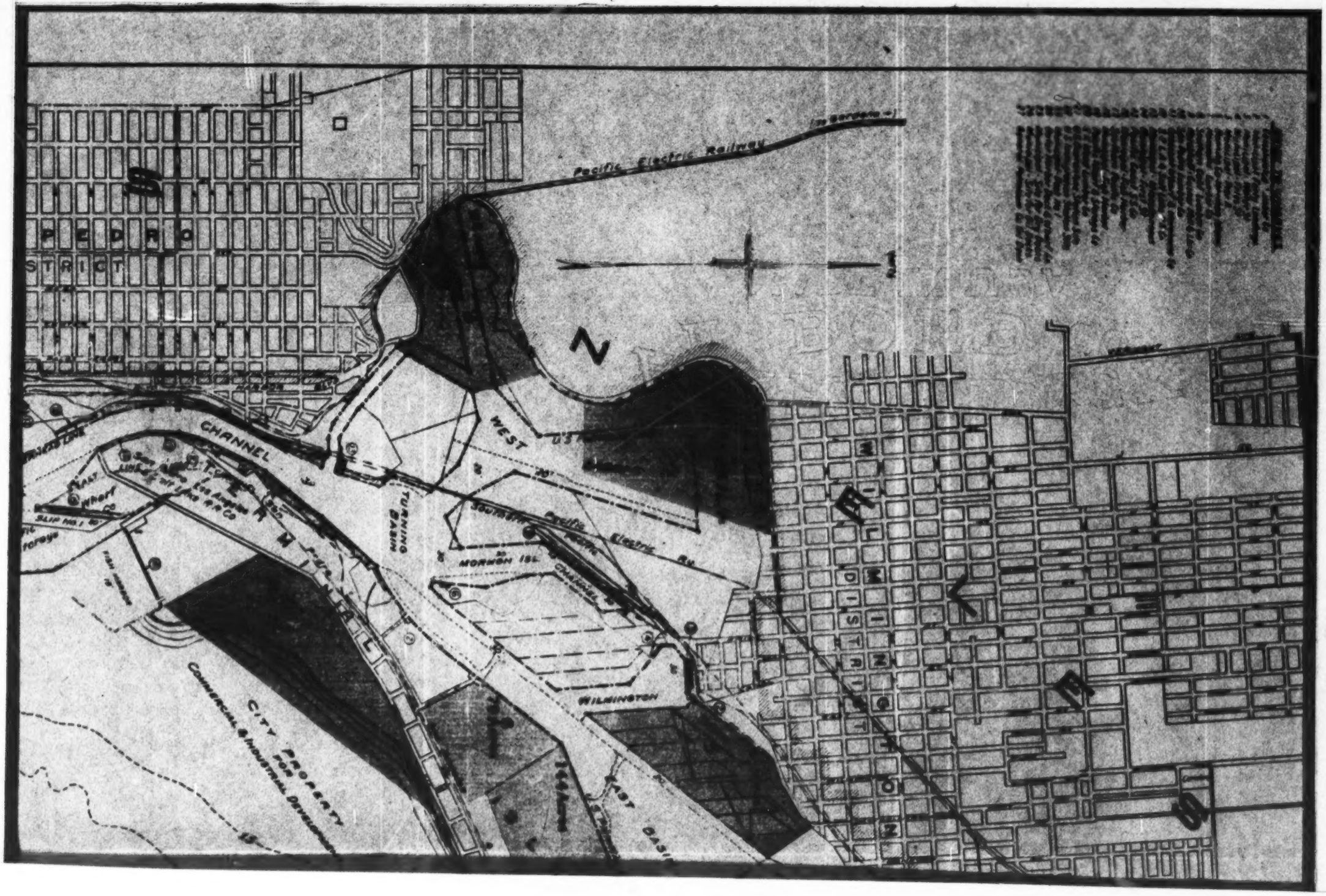
(iii) Parcels No. 8 is a "152-acre" parcel of submerged lands then being and since having been reclaimed, lying in the Pacific Ocean and Bay of San Pedro on the ocean front of Terminal Island immediately easterly of the present Fish Harbor and now constituting a part of Reeves Field or Roosevelt Field, hereinafter mentioned.

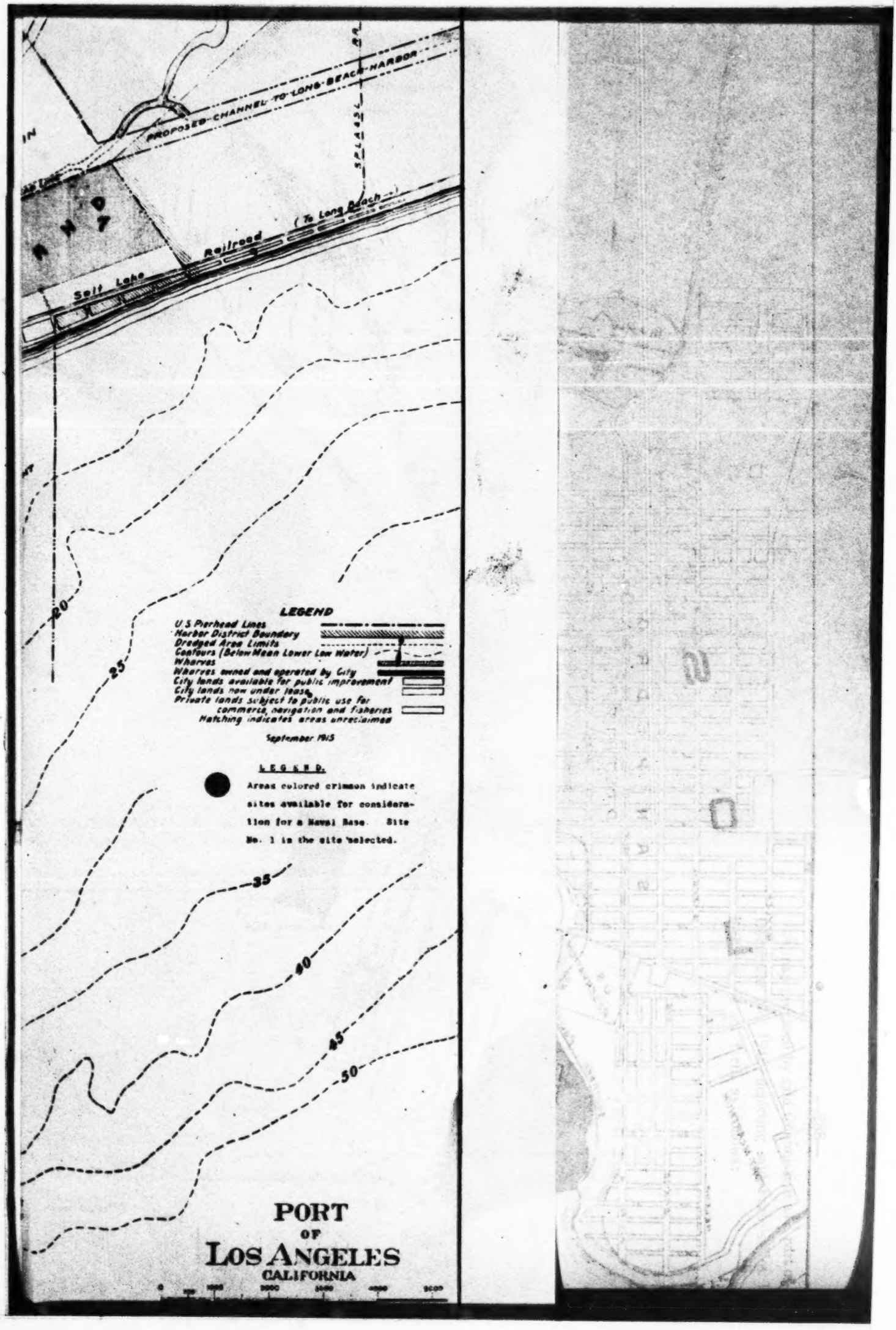
(iv) Parcels 5, 6, and 7 adjoin the East Basin in the Inner Harbor.

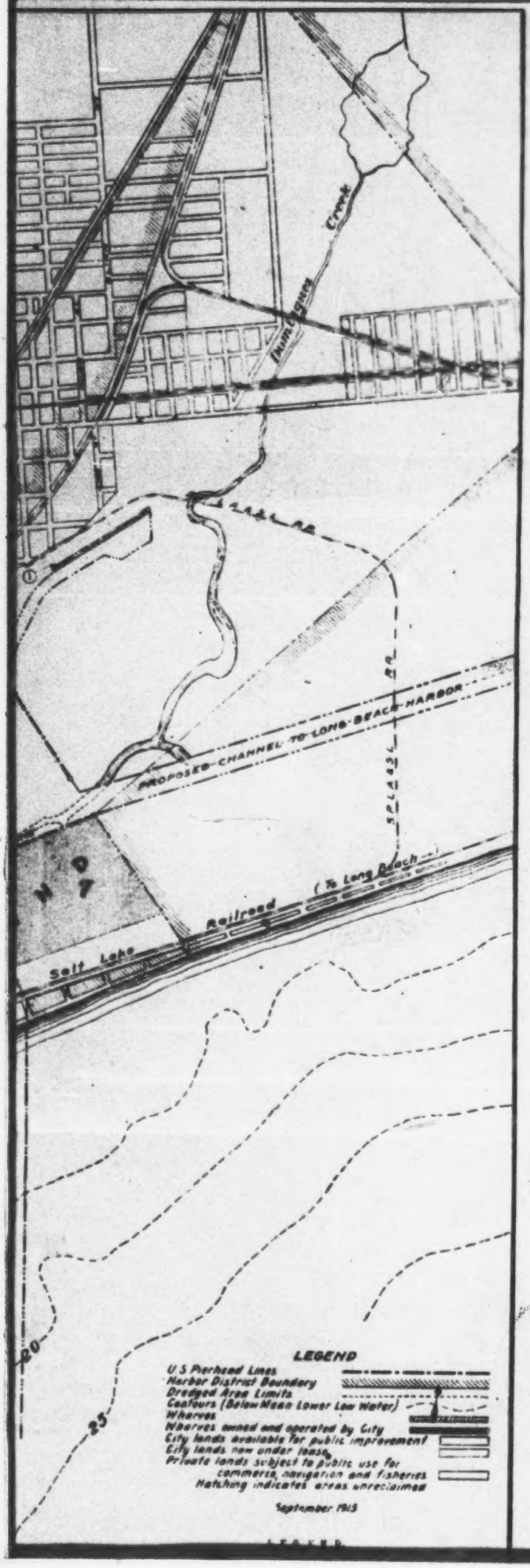
(v) Parcel No. 2, containing "39 acres," was in 1917, as to 33 acres thereof, owned by the United States by virtue of the grant from the State of California of March 9, 1897 above mentioned, conveying a 300 yard strip of submerged land around Deadman's Island, and as a result of the exchange of 1912-1915 of the 9.75 acre parcels between the United States and the City of Los Angeles above mentioned. The other six acres of said Parcel No. 2 then owned by the City of Los Angeles, lie westerly of and adjoining the 33 acre parcel of submerged lands lying in the Pacific Ocean and Bay of San Pedro.

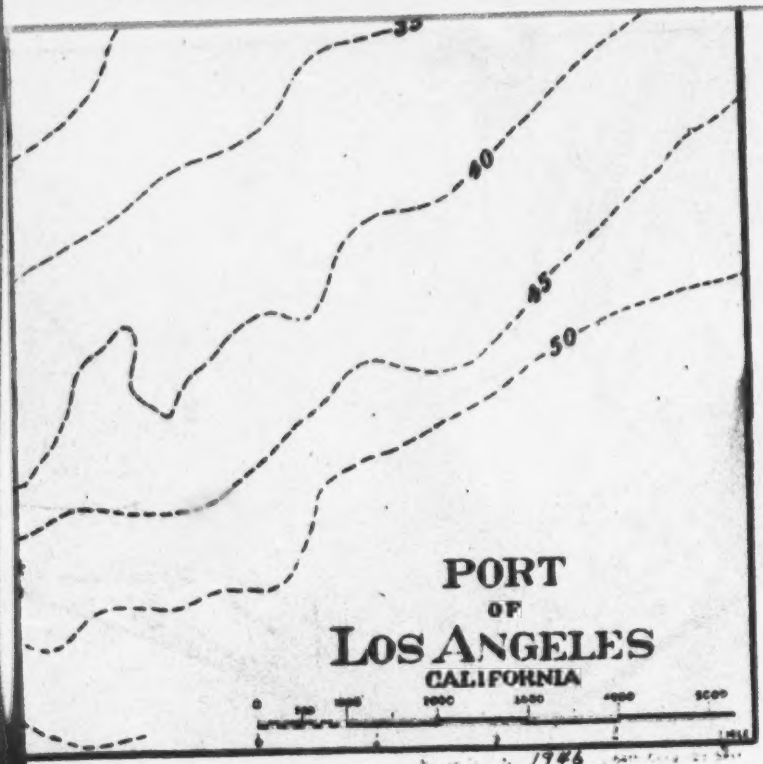
A map prepared by said Commission as a part of House Document No. 1946, depicting said Parcels Nos. 1 to 8, inclusive, is set forth as follows:

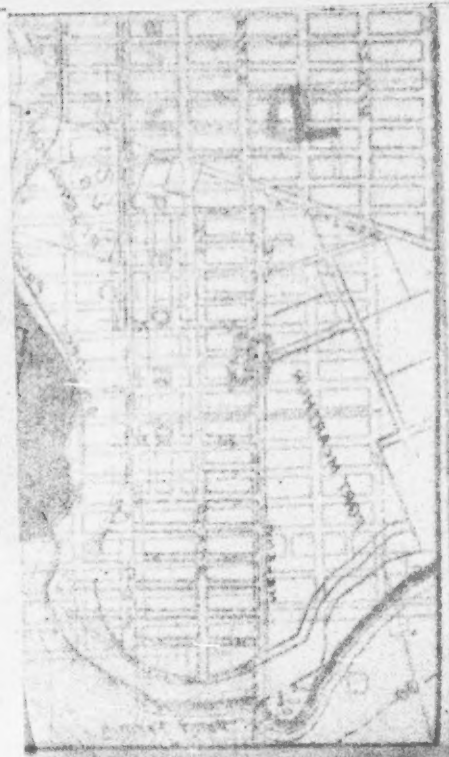

SAN PEDRO
DISTRICT
FORT MCARTHUR
U.S. RESERVATION
Southern Pacific R.R.
Pacific Electric Railway
WEST CHANNEL
U.S. PIERHEAD LINE
EAST CHANNEL 35'
DOCK No. 1
MAIN CHANNEL
Pacific Coast Stevedoring Co.
Pacific Coast Oil Storage
SLIP No. 1
EAST Wharf Co.
TURNING BASIN
MORMON ISL.
CHANNEL
WILMINGTON
CITY PROPERTY FOR COMMERCIAL & INDUSTRIAL DEVELOPMENT
EAST BASIN
BREAKWATER
U.S. Lighthouse
SAN PEDRO
HARBOR


Pacific Electric Railway
SAN PEDRO
DISTRICT
CHANNEL
WEST
TURNING BASIN
MORMON ISL.
WILMINGTON
CITY PROPERTY FOR COMMERCIAL & INDUSTRIAL DEVELOPMENT
144 Acres
EAST
DISTRICT
N


PROPOSED CHANNEL TO LONG BEACH HARBOR
Railroad
(To Long Beach)
Salt Lake
LEGEND
U.S. Pierhead Lines
Harbor District Boundary
Dredged Area Limits
Contours (Below Mean Lower Low Water)
Wharves
Wharves owned and operated by City
City lands available for public improvement
City lands now under lease
Private lands subject to public use for commerce, navigation and fisheries
Hatching indicates areas unreclaimed
September 1915
LEGEND.
Areas colored crimson indicate sites available for consideration for a Naval Base. Site No. 1 is the site selected.
20
25
35
40
45
50
PORT
OF
LOS ANGELES
CALIFORNIA


Creek
PROPOSED CHANNEL TO LONG BEACH HARBOR
Railroad
Salt Lake
20
25
LEGEND
U.S. Pierhead Lines
Harbor District Boundary
Dredged Area Limits
Contours (Below Mean Lower Low Water)
Wharves
Wharves owned and operated by City
City lands available for public improvement
City lands now under lease
Private lands subject to public use for commerce, navigation and fisheries
Hatching indicates areas unreclaimed
September 1913


35
40
45
50
PORT
OF
LOS ANGELES
CALIFORNIA
1946



3. The report of said Commission discussed and discarded each of the other 7 sites and then approved and recommended Site No. 1, and in that connection stated (H. D. 1946, *supra*, pp. 23-24):

"Site No. 1 consisting of 166 acres, that lie along the shore immediately inside of the inner end of the breakwater in the outer harbor, is readily accessible from the sea and is susceptible of satisfactory development as a main submarine base and as an aviation operating base. *In common with each of the other sites noted,* Site No. 1 *is composed of tide and submerged lands requiring reclamation in order to make it suitable for use.*"

* * * * * * * *

"33. Site No. 1 has been variously referred to as a 146 or a 147 acre tract and as a 166-acre tract, owing to changes in the position of the harbor lines. The latter is the latest and correct information corresponding to present boundaries, and this amount of submerged land will be available. *Of the 166 acres about 130 lie above the 18-foot contour, as regards depth at mean lower low water,* and would require fill to the average amount of about 30,000 cubic yards per acre. Any plan of development would be along the lines of an interior basin, both to secure reasonably smooth water at all times as well as to reduce the necessary fill to a minimum. This fill can be arranged for best by obtaining a 'dry fill' that is available from the considerable amount of grading work under way in the vicinity, if action is taken promptly. The immediate reclamation of more than 50 acres, requiring about 1,400,000 cubic yards, is not necessary."

* * * * * * * *

"36. *The City of Los Angeles, through Mayor F. T. Woodman, offers to cede all of site No. 1, consist-*

ing of 166 acres, to the United States without charge, as confirmed by the unanimous action of the city council by resolution passed November 23, 1916, to the effect that the matter would be submitted to the voters, as required by the city charter, at the earliest practicable date after notice is received of the acceptance of this proposition. This resolution is attached as Appendix C8."

4. In the report contained in House Document 1946, page 62, the diagram of Parcel No. 1 contains this description and statement of the ownership by the City of Los Angeles.

"Area 166 acres. Water frontage 3,640 linear feet. Entire parcel (hatched area); *title in city of Los Angeles in trust for people, etc., by virtue of California Statutes 1911, 1256, for tide and submerged lands.*"

Said Report describing Parcel No. 2 below the diagram, states ownership thereof as:

"Area, 39 acres. Water frontage, 4,600 linear feet. Hatched area, 6 acres; *title in city of Los Angeles in Trust for people,* etc., *by virtue of California Statutes 1911, 1256, for tide and submerged lands.* Crosshatched area, 33 acres; title in United States Government, *being a portion of Deadman's Island Military Reservation, act of California Legislature,* March 9, 1897."

Parcel No. 8 is described in said Report, House Document 1946, page 71, following the diagram thereof as follows:

"Area 152 acres. Water frontage 7,000 linear feet. Entire parcel (hatched area); *title in city of Los Angeles by virtue of California Statutes 1911, 1256.* Salt Lake Railroad Co. has some claim on small rectangle at the north, extent of said claim being uncertain."

5. A municipal election was held by the City of Los Angeles on June 5, 1917, submitting to the qualified electors of said city the proposition of whether or not a grant of said "147-acre tract" should be made to the United States for said Submarine Base. Said election was called by ordinance of said city council adopted May 16, 1917, describing the proposition to be submitted to the electors as follows:

> "Shall the grant by the City of Los Angeles to the United States of America, for public purposes, of all or any portion of that certain parcel of land at Los Angeles Harbor designated as 'Site No. 1, comprising 171 acres more or less of submerged lands *owned by the City of Los Angeles* and fronting on the West Channel in the outer harbor', be authorized."

The electors of said city voted in favor of authorizing the grant to the United States of said submerged lands for said purpose.

6. On June 9, 1917 the Secretary of the Navy sent a telegram to the Board of Harbor Commissioners of the City of Los Angeles acknowledging its telegram announcing the favorable vote of the electors of the City of Los Angeles granting authority to convey said submerged lands to the Navy for said Submarine Base and stated that:

> "The Secretary of the Navy acknowledges with great pleasure the telegram of the Board of Harbor Commissioners which states that the City of Los Angeles has voted to empower its Mayor to give authority to transfer the permanent submarine base site to the United States Government. The Navy Department greatly appreciates the action of the people of the City of Los Angeles, and especially the spirit

of cooperation and generosity in the national emergency evidenced by their splendid gift. Josephus Daniels."

7. The Solicitor for the Navy Department, on September 15, 1917, addressed the Board of Harbor Commissioners of the City of Los Angeles, requesting that the Navy be furnished an abstract of title to the submerged lands constituting the Submarine Base Site, and stated that:

> "With reference to said submarine base site an abstract of title and copy of the proposed deed conveying to the government is necessary to be submitted to the Attorney General for his approval before expenditure can be made on the site thus acquired."

8. On December 26, 1917 the City of Los Angeles adopted its Ordinance No. 37781 (NS), thereby granting to the United States said "171-acre Tract" of submerged land and authorizing the Mayor of the City of Los Angeles, on its behalf, to execute a deed granting to the United States the lands described therein. Said ordinance provided in part as follows:

> "There is hereby conveyed to the United States of America, for use for public purposes, that certain parcel of *tide and submerged lands of the City of Los Angeles* . . . situate in that portion of Los Angeles inner and outer harbor and along and adjacent to the southerly end of the submerged lands in front of the San Pedro Military Reservation . . . [particularly describing said "171-acre Tract]."

9. Pursuant to request of the Solicitor of the Navy Department for the abstract of title to be furnished to the

Attorney General of the United States, a complete set of the proceedings leading up to and including the ordinance adopted December 26, 1917, and copies of the legislative grant of May 1, 1911 from the State of California to the City of Los Angeles of the tide and submerged lands within the boundaries of said city, and the Act of the Legislature of the State of California approved May 28, 1913 authorizing municipalities to grant to the United States portions of submerged lands within their boundaries theretofore granted to such municipalities by the State of California, were furnished to the proper officers of the Navy Department.

10. Several years elapsed after delivery of said certificate, abstract of title and said form of deed pursuant to said Ordinance No. 37781 (NS), during which time the United States never indicated to said city that the said abstract and said proposed form of deed were satisfactory or unsatisfactory, or that said deed if delivered would be acceptable to Congress, or that Congress would appropriate any funds for the improvements of said lands. Accordingly, and on August 27, 1923, the City Council of the City of Los Angeles adopted its Ordinance No. 46913 (NS) reciting the foregoing circumstances, and further reciting that the steady growth of commerce through the port of Los Angeles made it advisable that the city proceed without delay to improve all available water frontage in the harbor, and that, owing to the changed conditions, the "171-acre Tract" would now be devoted to commercial purposes. Thereupon said Ordinance No. 46913 (NS) revoked the grant to the United States of the tide and submerged lands and revoked, rescinded and annulled the authorization and direction to the mayor of the City of Los Angeles contained in said

Ordinance No. 37781 (NS) to execute a deed granting the same to the United States.

(XIV)

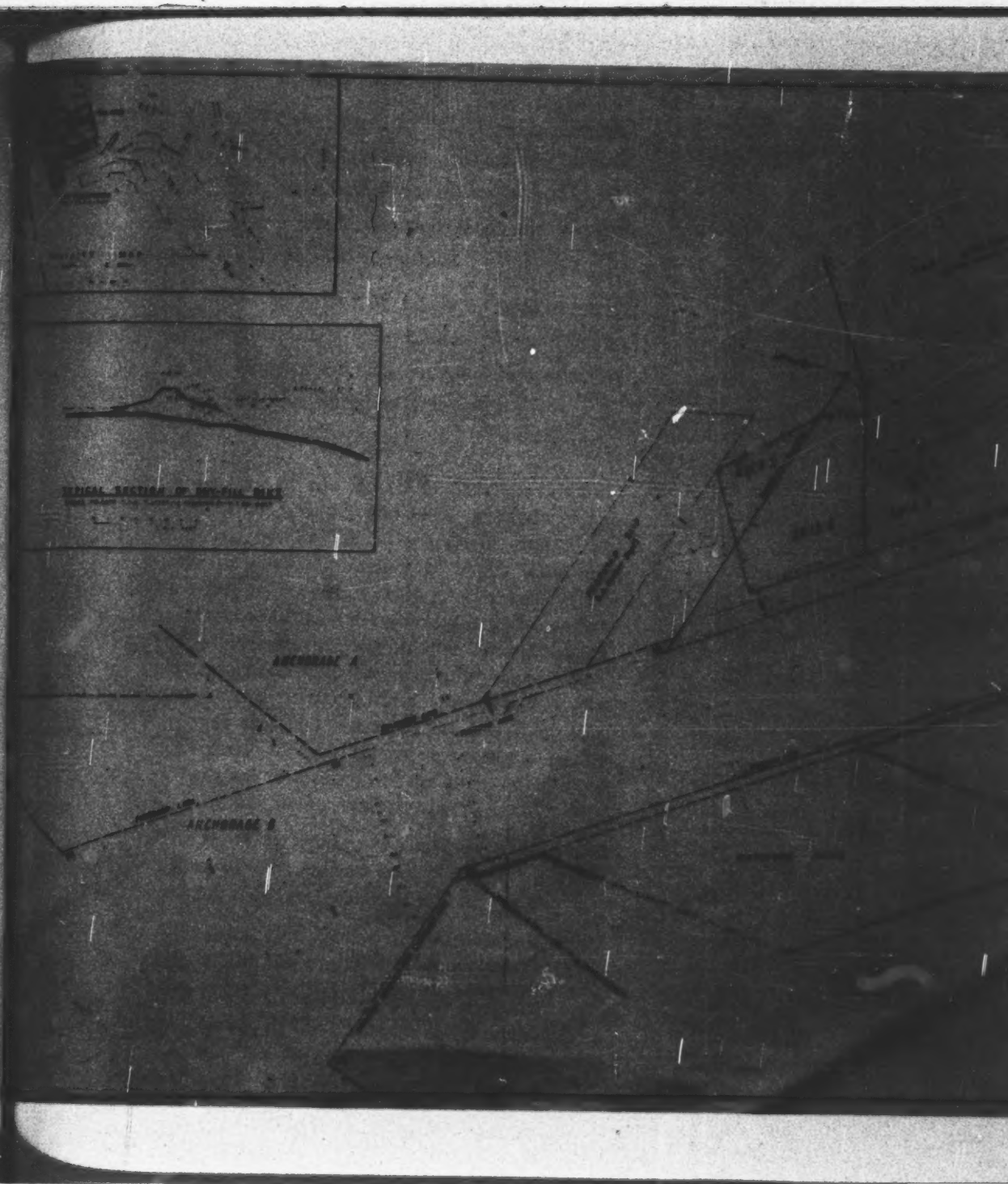
Another act on the part of the United States in recognition of the title of the City of Los Angeles to the submerged lands in the Pacific Ocean and Bay of San Pedro relates to the reclamation by the United States Engineer Office of submerged lands in front of Fort McArthur in the year 1937, in the following manner:

1. On April 22, 1937 the United States Engineer Office at Los Angeles addressed a communication to the Board of Harbor Commissioners of the City of Los Angeles advising that the United States proposed to reclaim submerged lands adjacent to the West Channel in the Los Angeles Outer Harbor owned by the United States as a result of previous grants from the State of California to the City of Los Angeles. The City was thereby advised that the United States proposed to extend a retaining dyke then under construction around the area to be reclaimed

> "so as to include a triangular *piece of city-owned* land adjacent thereto designated as 'Area D' . . . Your approval is requested on the operations proposed herein *in so far as city-owned lands* will be effected . . ."

Accompanying said letter of April 22, 1937 was a drawing prepared by the United States Engineer Office entitled "File 64-1-23" dated March 30, 1937, "Fort McArthur, Retaining Dike Around Submerged Tideland Lower Reservation."

A copy of said File 64-1-23 is set forth as follows:



2. At a meeting of the Board of Harbor Commissioners held on May 5, 1937 said Board granted the request of the United States Engineer Office to enclose said triangular shaped parcel of city-owned land and deposit material therein upon specified conditions.

On May 5, 1937 the Board of Harbor Commissioners addressed a communication to the United States District Engineer at Los Angeles advising of said Board action granting said permit and stated as follows:

"Dear sirs:

"At a meeting of the Board of Harbor Commissioners held May 5, 1937, you were granted permission, on behalf of the War Department, and in accordance with your application of April 22nd and attached print, to enclose a triangular shaped parcel *of City owned land under water* by a dyke, and to deposit dredge material within the area thus enclosed, in connection with the deepening of the Main Channel and Turning Basin in the Outer Harbor, permitting excess material, estimated at less than 100,000 cubic yards, to be discharged southerly of the south reservation boundary in the area adjacent to the bluff, with the understanding that:

"1. *No property rights are conveyed to applicant in the parcel of City owned land for which permission to fill with dredge spoil is granted;*

"2. The usual General Permit be obtained, without charge, at the office of the Harbor Engineer;

"3. The permit shall not become effective *until written acceptance* of the terms hereof shall have been filed with the Harbor Engineer, City Hall, San Pedro, California."

Permit No. 53, Series 1937, was thereupon issued by the Los Angeles Board of Harbor Commissioners to the United States and written acceptance of the terms thereof was thereupon made by the United States District Engineer Office.

3. The following year on April 7, 1938 the United States Engineer Office addressed a further application to the Board of Harbor Commissioners for permission to deposit an additional amount of dredged material in the submerged lands adjacent to and southerly of the South boundary of Military Reservation of San Pedro. Said application referred to the permit issued to the United States by the Board of Harbor Commissioners on May 14, 1937, as aforesaid, and stated:

> "For depositing dredged material on *city owned submerged* lands southerly of the United States military reservation at Fort McArthur pursuant to the foregoing, it is requested that Permit 53 be modified to allow a deposit of 250,000 cubic yards of dredged material on said *city owned lands* adjacent to and southerly of the south boundary of the military reservation."

4. Pursuant to said request of the United States the Board of Harbor Commissioners on April 13, 1938 granted permission in accordance with said revised application. On May 13, 1938 the Board of Harbor Commissioners advised the United States District Engineer of the granting of said permit in accordance with said application of April 7, 1938, upon the same conditions specified in Permit No. 53 above set forth.

On or about April 13, 1938, the United States, acting by and through its War Department, accepted in writing the terms and conditions of said permit.

(XV)

Among acts of recognition on the part of the United States of America of the ownership and title of the City of Los Angeles in and to the submerged lands in the Pacific Ocean and the Bay of San Pedro, involving successive leases by the United States from the City of Los Angeles of airport property thereafter known as Reeves Field, are the following:

1. On March 14, 1928, the Commander in Chief of the Pacific Fleet of the United States Navy wrote to the City of Los Angeles and its Board of Harbor Commissioners that the basing in the Los Angeles Outer Harbor of certain naval carrier vessels required procurement of a landing place for naval planes and stated that the United States Navy had no funds available with which to provide airport facilities and requested the City to cooperate by making available such facilities in the harbor area.

2. On the same date of March 14, 1928, the Los Angeles Board of Harbor Commissioners replied and advised the Navy Department that a location for an airport on Terminal Island would be made available and that the Board would grant to the Navy a permit for the use of a large tract of land for a navy airport; and that the Board would make the necessary expenditures therefor

provided the use of the airport was not to be confined solely to the United States Navy.

3. On March 23, 1928, the City Council of the City of Los Angeles approved a plan for converting into an airport the land owned by the City on Terminal Island. Thereafter the Los Angeles Board of Harbor Commissioners proceeded with the construction of airport facilities and the reclamation and improvement of the land on Terminal Island for that purpose. By the year 1934 the City of Los Angeles had expended in the construction of jetties, sea walls, roadways and other airport facilities for the airport on Terminal Island a sum in excess of $1,073,000.

4. The entire airport property on Terminal Island thus constructed and improved from 1928 to 1934, as aforesaid, was, prior to reclamation and filling in front of Terminal Island, entirely submerged lands and part of the Pacific Ocean and Bay of San Pedro, situated in front of Terminal Island in a state of nature.

5. Said airport property on Terminal Island, formerly a part of the submerged lands of the Pacific Ocean, was the same as the "Parcel No. 8" or "152-acre parcel" also ("166-acre parcel," or "171-acre parcel") described in House Document No. 1946, *supra*, and by the Commission on Navy Yards and Naval Stations reported to Congress in the year 1917 as

> *"the titles of Nos. . . . 8 are vested in the City of Los Angeles by cession from the State of California,"*

as above alleged.

6. The Navy Department during the years 1928-1929 made use of the airport facilities being improved and constructed by the City of Los Angeles. During the years 1930-1932 the United States Navy ceased to use said airport. On or about March 27, 1933, the City of Los Angeles leased said airport to the United States Coast Guard for a period of one year, likewise leasing to the United States Coast Guard a four-acre tract adjoining the airfield to be used for erection of administration buildings, shops, hangars and other incidental purposes.

7. On June 10, 1935, the Commander in Chief of the United States Fleet, Admiral Reeves, addressed a communication to the Mayor of the City of Los Angeles and requested the City to lease to the Navy Department a portion of Terminal Island for use by Navy aircraft and proposed that the lease contain an option giving the Navy the right to purchase the property at its then assessed value.

8. Formal application was made by the Acting Secretary of the Navy on July 18, 1935, to the Los Angeles Board of Harbor Commissioners for a permit to use the airport site on Terminal Island. Said application made by the Acting Secretary of the Navy reads in part as follows:

> "Application is hereby made for the right to use, for a period not exceeding 30 years, *those certain lands* at Los Angeles Harbor, *belonging to the City of Los Angeles,* as shown on map attached hereto, and more particularly described as follows * * * for the purpose of occupying a site on Terminal

Island, Los Angeles, California, as an airport for the use of the Fleet."

9. Pursuant to said request the Board of Harbor Commissioners executed a Permit-Lease to the United States reciting in part as follows:

> "Whereas the United States of America, through the Navy Department, has submitted an application to the Los Angeles Harbor Department, City of Los Angeles, California, for permission to use a site on Terminal Island *owned by said City of Los Angeles,* as an airport * * *"

Said lease thereby granted to the United States permission to occupy and use

> "the following described lands on Terminal Island *owned by the City of Los Angeles, California*"

particularly describing the leased premises and reciting that it contained 328.5 acres, more or less. *Approximately 100 acres thereof was then under water of the Pacific Ocean and Bay of San Pedro.* Said lease excepted and reserved therefrom a certain parcel containing 3,000 square feet occupied by the Board of Public Works of the City of Los Angeles under Harbor Department Permit No. 391, dated September 21, 1910, for sewer disposal purposes. Said lease likewise excepted and reserved therefrom a parcel containing 5910 square feet occupied by private parties under Harbor Department Order No. 2152 adopted August 6, 1930, for garage purposes.

Said permit lease was for a term ending June 30, 1936, with an option to the government to renew the same annually by giving thirty days notice, but not to extend beyond June 30, 1965.

Said permit lease contained a further provision for restoration of possession to the City upon termination, reading in part as follows:

> "The Government agrees that upon the termination of this permit it will on request of the Permittor remove all of its property placed on said land and restore the said land as nearly as practicable to its original condition."

Said Lease contained no provision for an option to the Government to purchase the demised premises under any circumstances.

Said Lease was executed and accepted on behalf of the United States, acknowledging all the terms and conditions thereof, by the Acting Secretary of the Navy, said acceptance being attached as a part of said lease and reads as follows:

> "This Permit is executed on behalf of the United States by the Secretary of the Navy *in acknowledgment of the acceptance of the terms and conditions therein set forth.*
>
> "United States of America
> H. R. Stark (Signed)
> "Acting Secretary of the Navy."

Attached to said lease is a map delineating the demised premises. A copy of said map is set forth as follows:


S 19°16'22" E 3010.10'
N65°44'46"E 430.15'
N70°43'32"E 331.06'
Arc 610.83'
100' Ave.
Approx. Land Area
N65°45'45"W 2253.00'
LEASE MAP L.A. HARBOR
Scale 1" 600'
Submitted
Approved
Office Engineer

It is shown on said map that 100 acres of the demised premises is "Water Area."

10. On July 13, 1936, the United States Navy addressed a communication to the City of Los Angeles and its Board of Harbor Commissioners advising of the Navy Department's election and approval of the continuance for the fiscal year 1937 of the privileges granted to the United States by Revocable Permit dated July 31, 1935, for the privilege of using lands on Terminal Island for airport purposes. On July 17, 1936, the Los Angeles Board of Harbor Commissioners addressed a communication to the Navy Department acknowledging receipt of said communication of July 13, 1936.

Like communications were sent by the United States Navy to the City of Los Angeles and its Board of Harbor Commissioners annually for the years 1937, 1938 and 1939, and said Revocable Permit dated July 31, 1935, was annually renewed thereafter through June 30, 1940.

(XVI)

A further act of recognition on the part of the United States of the title of the City of Los Angeles in and to the tide and submerged lands in the Pacific Ocean and the Bay of San Pedro, resulting from the granting of a Revocable Lease Permit from the City to the United States to occupy a portion of the "147-acre Tract" for naval landing purposes, is the following:

1. The City of Los Angeles owns a tract of tide and submerged lands in the Outer Harbor known as the "147-

acre Tract," mentioned above. A portion of said Tract adjoins certain upland owned by the City of Los Angeles devoted to recreational purposes and known as "Trona Field."

2. Prior to July, 1932, the United States made application to the City of Los Angeles for a Revocable Lease Permit for the use and occupancy of a portion of the "147-acre Tract" of tide and submerged lands for a landing for naval vessels and watercraft. The Board of Harbor Commissioners of the City of Los Angeles granted its Revocable Permit No. 102, which was executed by the United States through its Navy Department, granting to the United States the use and occupancy of said portion of said "147-acre Tract" for naval landing purposes.

3. Thereafter on August 8, 1932, the Board of Harbor Commissioners granted its Revocable Permit No. 248 superseding and continuing permit No. 102 and the others theretofore granted to the United States and extending the areas leased to the United States. Said permit No. 248 was executed on behalf of the United States by the Commander in Chief of the United States Fleet under direction of the Secretary of the Navy.

4. The Navy Department has enjoyed and occupied the portions of the "147-acre Tract" so granted by the City of Los Angeles and the United States has paid the annual rental therefor in accordance with the terms of said permit.

5. Each of said Revocable Lease Permits No. 102, 248, and others superseded thereby, contains this provision:

> "Permission is hereby granted to the United States Navy Department to occupy and use the following described lands in Los Angeles Harbor, *owned by the City of Los Angeles,* for the uses and purposes and subject to the terms and conditions hereinafter set forth, which said lands are situate in the City of Los Angeles, State of California, * * *"

6. On March 29, 1940, the Commandant of the Eleventh Naval District of the United States Navy made a written request to the Los Angeles Board of Harbor Commissioners that piles be driven and repairs be made to the landings erected in the portion of said "147-acre Tract" covered by said permits and stated in part as follows:

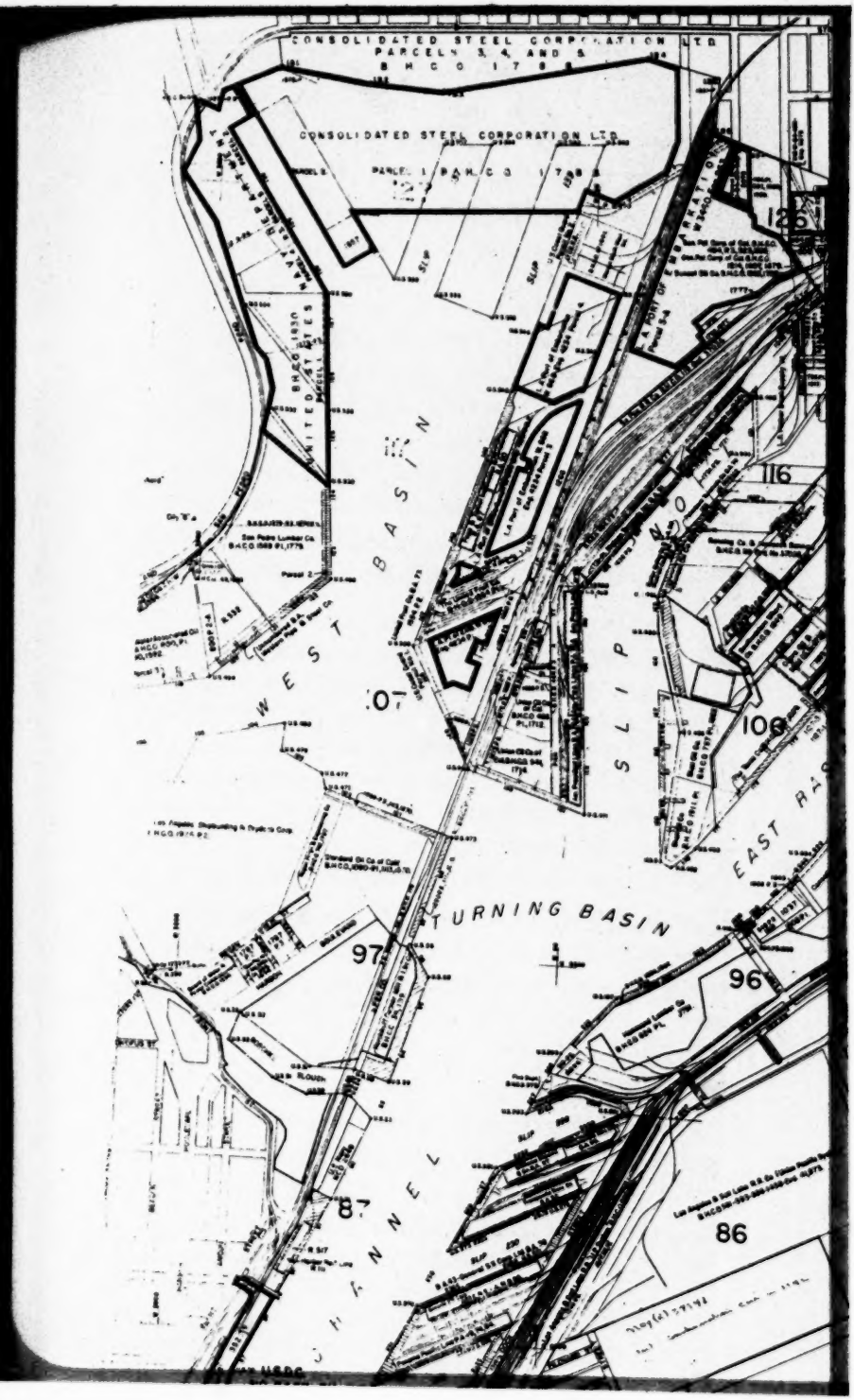
> "It is accordingly requested that in view of the *City's ownership* of these two structures and the purpose for which they are used, that your Department undertake this work of removal and driving of the piles, at no cost to the Navy * * * the Navy will furnish the necessary piles."

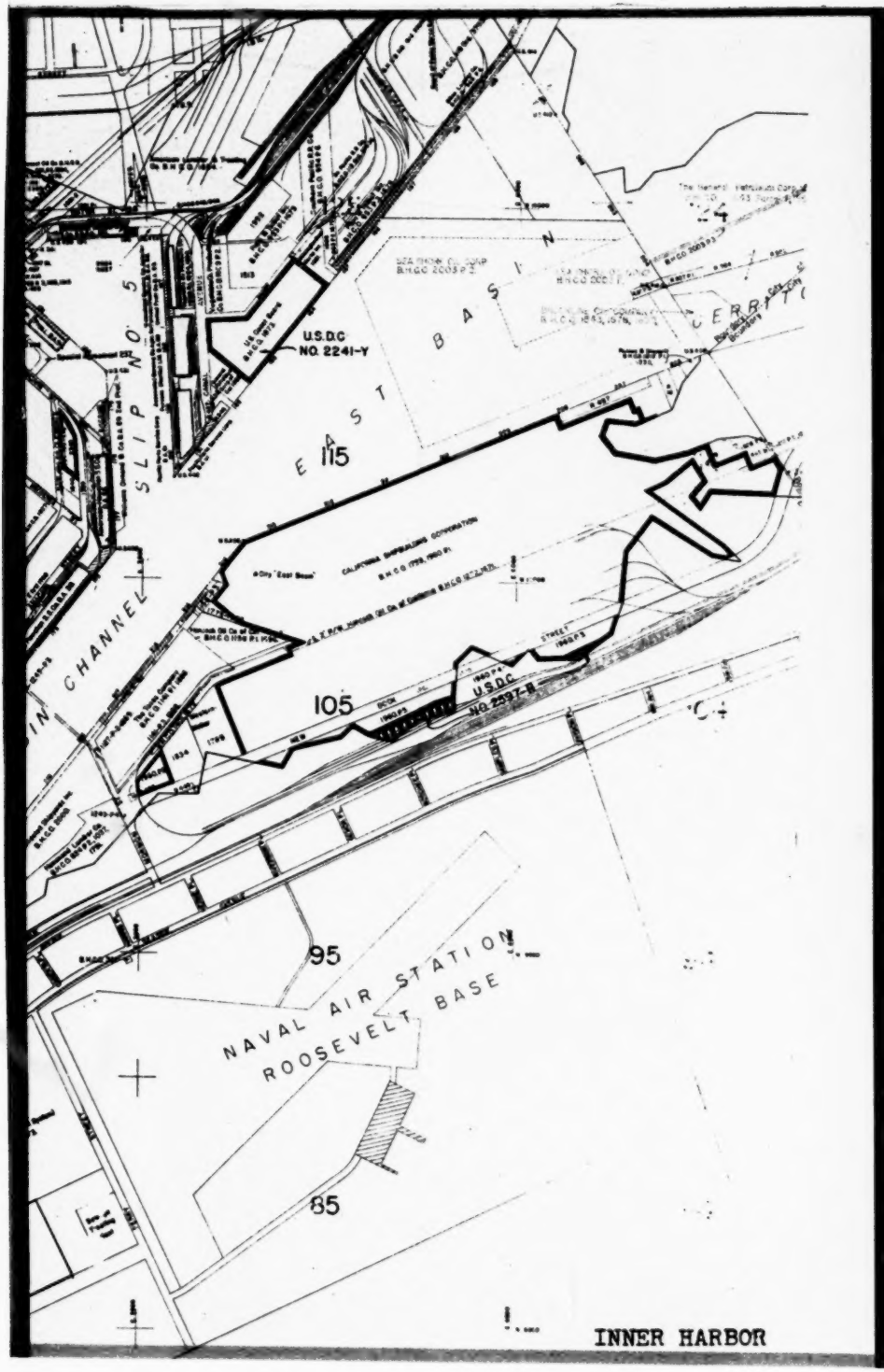
Pursuant thereto the City of Los Angeles, at its own expense, constructed said repairs at said landing as requested by the United States.

(XVII)

The United States of America, by and through its various departments and agencies, for a period in excess of 25 years, has requested and obtained from the City of Los Angeles and its Board of Harbor Commissioners, numerous grants, leases, and other interests in and to reclaimed tide and submerged lands in the Inner Harbor of Los Angeles. Likewise, the United States of America has condemned, in a number of instances, reclaimed tide and submerged lands owned by the City of Los Angeles in the Inner Harbor, in which condemnation suits the United States has alleged that the City of Los Angeles was the owner thereof and in which stipulations and decrees have been made and entered, stipulating or adjudging that the City of Los Angeles is the owner of such tide and submerged lands.

A map is set forth next hereinafter, depicting certain (but not all) of the areas of tide and submerged lands in the Los Angeles Harbor owned by the City of Los Angeles granted or leased to, or condemned by, the United States of America from time to time:


CONSOLIDATED STEEL CORPORATION LTD
PARCELS 3, 4, AND 5
B H C O I T E S
CONSOLIDATED STEEL CORPORATION LTD
PARCEL 1 B.H.C.O. 1788
126
116
106
WEST BASIN
SLIP NO
EAST BASIN
TURNING BASIN
97
96
87
86
CHANNEL


EAST BASIN
U.S.D.C. NO. 2241-Y
U.S.D.C. NO. 2397-B
115
105
95
85
NAVAL AIR STATION ROOSEVELT BASE
INNER HARBOR

A synopsis follows of certain (but not all) the leases to
nd condemnations by the United States of tide and sub-
erged lands owned by the City of Los Angeles in the
os Angeles Harbor area, as shown on the map last here-
before set forth:

1. Under date of July 11, 1941, Consolidated Steel
orporation, Ltd., a corporation, entered into an agree-
ent, known as "The Facilities Contract", with the United
ates of America acting by and through the United States
aritime Commission. Said contract required said corpo-
tion, as "Contractor" to construct and operate a ship-
rd for said Maritime Commission on lands owned by
e City of Los Angeles. Said contract provided in part
at

(a) "the Contractor will, by permit granted to it by the Board of Harbor Commissioners of the City of Los Angeles, acquire the right to use certain parcels of real estate (referred to thereinafter in said Facilities Contract as 'The Real Estate') located in the City of Los Angeles, California (hereinafter called 'Tract No. 1') for the purpose of constructing and operating the Facilities herein described, * * *".

(b) The title to the Facilities, either completed or in the course of construction, shall be in the Government even though such facilities are fixed to the realty.

(c) That "all wharves, piers, docks, slips, bulkheads, sea walls and channels which, under the terms of the charter of the City of Los Angeles, become the property of said City upon the expiration of the term of the permit."

(d) The Maritime Commission shall reimburse the Contractor for all rent or other charges which the

Contractor may be obliged to pay under any permit or lease for the Real Estate.

(e) If the Contractor so directs the U. S. Maritime Commission shall enter upon the Real Estate and demolish or remove any Facilities installed on Tract No. 1, and in this connection it is provided:

> "Provided that Tract No. 1 of the Real Estate on which the Facilities or such thereof as shall be demolished or removed shall be located, shall be restored so as to leave the same in as good condition as that in which they were immediately prior to the acquisition, construction, or installation of such Facilities thereon; * * *".

(f) The Maritime Commission may take possession of the Real Estate and of the Facilities thereon including all rights of the Contractor under any lease or other agreement with respect to the Real Estate in the event of default by the Contractor thereunder.

(g) "Such permit or other agreements with respect to Tract No. 1 of the Real Estate shall be in form and substance satisfactory to the Commission, and shall include (but without limitation) provisions confirming to the owner and the Commission (as against the owner of said Tract No. 1) the same rights in respect of said Tract and other Facilities, including (but without limitation) the right to take over and operate said Tract No. 1 as herein provided as are granted or are purported to be granted to the owner and Commission by the terms of this contract."

On August 12, 1941, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1788 granted to Consolidated Steel Corporation, Ltd., for the term of five (5) years a permit to use that certain land described as "Tract No. 1" in said "Facilities Contract"

of July 11, 1941, referred to hereinabove in the last preceding paragraph. Said land "Tract No. 1" is and was tide and submerged lands owned by the City of Los Angeles under the jurisdiction and control of the Harbor Department thereof and is depicted on the map hereinabove in this article set forth as "Consolidated Steel Corporation, Ltd. B. H. C. O. 1788 Parcel 1, Parcel 2."

The United States acting by and through the United States Maritime Commission thereafter approved and accepted the terms and provisions of said Order No. 1788.

Commencing on or about the date of said Order No. 1788, Consolidated Steel Corporation, Ltd., took possession of the premises so granted under and pursuant to the terms and provisions of said Order and thereafter utilized said premises in the performance of its obligations under said Facilities Contract.

2. Under date of January 11, 1941, California Shipbuilding Corporation, a corporation, entered into Facilities Contract No. 1284, with the United States of America acting by and through the United States Maritime Commission. The provisions of said contract as amended by a Supplemental Facilities Contract No. 1284 (ESP-1) Addendum No. 1, dated January 25, 1941, and a Second Facilities Contract No. DA-MCc-4, dated April 9, 1941, except that it dealt with different premises, were substantially identical with the provisions of that certain Facilities Contract between the United States of America and the Consolidated Steel Corporation, Ltd., dated July 11, 1941, hereinabove in this article referred to.

On February 18, 1941, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1759 granted to the California Shipbuilding Corporation for a term of five (5) years a permit to use that certain land

referred to as "Real Estate" in said Facilities Contract of January 11, 1941, hereinabove referred to in the immediately preceding paragraph. Said land is and was submerged and tide land owned by the City of Los Angeles under the jurisdiction of the Harbor Department thereof and is depicted on the map hereinabove set forth as "California Shipbuilding Corporation B. H. C. O. 1759 1960 P. 1 P. 2 P. 3 P. 4 P. 5." The provisions of said Order 1759, except as to the terms referred to, were substantially identical with the provisions of Order No. 1788 hereinabove referred to.

The United States acting by and through the United States Maritime Commission thereafter approved and accepted the terms and provisions of said Order 1759.

Commencing on or about the date of said Order 1759, California Shipbuilding Corporation took possession of the premises so granted under and pursuant to the terms and provisions of said Order and has at all times since said date utilized said premises in the performance of its obligations under said Facilities Contract No. 1284 and amendments thereto.

3. On February 18, 1942, the Board of Harbor Commissioners of the City of Los Angeles, by its Order No. 1830, granted to the United States of America, Navy Department, a permit to use certain tide and submerged lands owned by the City of Los Angeles for the purpose of constructing and operating thereon a shipbuilding plant and for purposes incidental thereto. The lands so granted are designated on the map hereinabove set forth by the following: "The United States Navy Department B. H. C. O. 1830 Parcel 1 Parcel 2 Parcel 3 Parcel 4 Parcel 5."

The said Order No. 1830 provided that the permit so granted was

(a) subject to certain permits previously granted to private corporations;

(b) for a term ending February 4, 1947 and for such further five (5) year periods not extending beyond February 4, 1962, as the Government might elect to continue the use of said premises under all the terms and conditions of the permit;

(c) for a rental payable on the first day of each month to the Board of Harbor Commissioners of the City of Los Angeles in the amount of $4,805.28 per month during the first five (5) year period and $6,-471.95 per month during the second five (5) year period.

Plaintiff on or about the aforesaid date of said order entered upon and took possession of said lands under and pursuant to the terms and provisions of said Order No. 1830.

4. On February 15, 1942, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by Lease No. W 868-eng-4234, the premises depicted on the map hereinabove set forth as "L. A. Port of Embarkation W868-eng. 4234 P. 1 P. 2 Parcel 3 Parcel 4" for the purposes of storage and sub-port of embarkation. Said lease provided that:

(a) the term thereof should end on June 30, 1943, renewal thereof was at the option of the United States from year to year;

(b) the United States would not permit the use of said premises by any one other than the Government,

its sublessee, agents or servants and then only for the purposes therein stated;

(c) rental was $3,169.18 per month;

(d) said lease or renewal thereof may not extend beyond the existing emergencies and sixty (60) days thereafter;

(e) the United States if required by lessor shall before the expiration of said lease or renewal thereof restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable wear and tear excepted;

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

This lease was on form "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

5. On November 25, 1942, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, War Department, by Lease No. 3460-eng. 963 those certain tide and submerged lands owned by the City of Los Angeles and depicted upon the map hereinbefore set forth as "L. A. Port of Embarkation W. 3460 eng. 963 Parcel 5A."

The terms and conditions of said lease No. W. 3460-eng. 963 were substantially identical with those of that certain lease W-868-eng. 4234 hereinabove in the preceding paragraph referred to, except for a slight difference in the rent payable thereunder.

This lease was on form "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935."

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

6. On the 1st day of October, 1943, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by No. W 04-193 ENG 3075 those certain tide and submerged lands owned by the City of Los Angeles, two parcels of which are described in the map hereinabove set forth as "W-04-193-eng. 3075 Parcel 5C P. 15."

Said lease was on form "CR Form 207" and provided that:

(a) the City of Los Angeles "whose interest in the property hereinafter described, * * * is that of *fee owners*".

(b) the term extended to June 30, 1944, and unless terminated as therein required by the Government should continue from year to year provided that adequate appropriations are available from year to year for the payment of rentals and provided, further, that this lease shall in no event extend beyond sixty (60) days from the date of termination of the unlimited national emergency.

(c) the United States shall pay the City as rental $425.37 per month for Parcel 15 and $245.11 per month for Parcel 5C.

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

7. On November 3, 1943, the City of Los Angeles acting by and through its Board of Harbor Commissioners leased to the United States of America, Army Department, by lease No. W 04193 ENG 2349 those certain tide and submerged lands owned by the City of Los Angeles and depicted on the map hereinabove set forth as "W 04-193-ENG. 2349."

Said lease was on form "CR Form 207." The provisions, except as to premises involved and rental due to the City of Los Angeles thereunder were substantially identical with the provisions of that certain lease No. W 04-193 ENG. 3075 hereinabove in the immediately preceding paragraph referred to. Said lease provided for the payment to the City of Los Angeles of $201.84 per month as rental for the use of said premises.

On or about the aforesaid date of said lease the United States entered upon and took possession of said premises under and pursuant to the terms thereof.

8. An action entitled *"United States of America, plaintiff, versus 9.3875 Acres of Land, more or less, situated in the County of Los Angeles, State of California; City of Los Angeles, a municipal corporation; Board of Harbor Commissioners of the City of Los Angeles; et al., defendants,"* was commenced in the District Court of the United States for the Southern District of California, Central Division (being Case No. 2241-Y Civil), an amended complaint in condemnation therein being filed on October 30, 1942. The United States there alleged that it sought to acquire for use by the Coast Guard a leasehold inter-

est or interests for a term of years expiring August 1, 1952, in certain real property described in Paragraph III of said complaint.

It was there alleged

> "that the apparent and presumptive owner of the real property described in Paragraph III of this amended complaint is the City of Los Angeles; that the defendant California Yacht Club is the apparent and presumptive owner of all improvements thereon and of all personal property to be acquired herein."

The lands so referred to and described in said amended complaint are and were tide and submerged lands owned by the City of Los Angeles and are depicted on the map hereinabove set forth by the letters and figures "U. S. Coast Guard. B. H. C. O. 1873, U. S. D. C. No. 2241-Y."

Upon the filing of said complaint and on the date thereof an order for immediate possession was made and entered by said Court, and pursuant thereto the Government entered upon and took possession of said lands.

On October 29, 1942, the Government filed a Declaration of Taking executed by the then Acting Secretary of the Navy, James Forrestal, pursuant to Title 40, section 258-A *et seq.*, U. S. Code, and coincident with the filing thereof paid into Court the sum of $75,000 which was stated in said Declaration to be said Acting Secretary's estimate of the just compensation to be paid for the taking of said property.

On November 10, 1942, the United States of America, the City of Los Angeles, the County of Los Angeles and the California Yacht Club, acting by and through their respective counsel entered into a "STIPULATION FOR

JUDGMENT" which was filed in said action on November 13, 1942. In said stipulation for judgment, in addition to other matters, the parties agreed that the sum of $75,000 was a

> "fair, just and adequate compensation and award of damage for the condemnation and taking by plaintiff of said leasehold estate and interest of the lands so taken."

On November 10, 1942, the Board of Harbor Commissioners of the City of Los Angeles by its Order No. 1873 granted to the United States of America, Navy Department, a permit authorizing the United States Coast Guard to use and occupy the lands, possession of which had theretofore been taken by the Government pursuant to said condemnation action and declaration of taking therein.

Said Order recited that the representatives of the Government, the Board of Harbor Commissioners of said City, and the California Yacht Club, had agreed upon a settlement of said condemnation action, which settlement provided that said Board should grant to the Government a permit to occupy and use the premises in question for the remainder of the term of the permit theretofore granted to the California Yacht Club expiring on August 1, 1952, at the same rate of compensation as provided for in said permit to the California Yacht Club.

The plaintiff on February 15, 1943, accepted said permit and in doing so used the following language:

> "The undersigned grantee hereby accepts the foregoing permit and agrees to abide by and observe each and every of the terms and conditions thereof."

2. An action entitled *"United States of America, plaintiff, vs. 5.399 Acres of Land, More or Less, in Los An-*

geles County, California; Board of Harbor Commissioners of the City of Los Angeles; City of Los Angeles, a municipal corporation, et al., defendants," was commenced in the District Court of the United States for the Southern District of California, Central Division (being case No. 2469 P. H. Civil), by the filing of a complaint in condemnation on October 3, 1942.

The United States of America appeared in said action, as alleged in said complaint, by a Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States and pursuant to the request of the Acting Secretary of the Navy.

By said action the Government sought to condemn a leasehold interest in said lands located in the inner Los Angeles harbor area, a part of which was owned by the City of Los Angeles.

In said Complaint the Government alleged

> "that the names of the apparent, purported and presumptive owners of the hereinabove described property are the Southern Pacific Railroad and the Board of Harbor Commissioners of the City of Los Angeles, California."

Upon the filing of said complaint and upon the date thereof an order of immediate possession was made and entered by said Court, and pursuant thereto the Government entered upon and took possession of said lands.

On November 1, 1942, the Board of Harbor Commissioners of the City of Los Angeles leased to the United States of America, Navy Department, by lease No. N O Y (R) 35239, the premises sought to be condemned by the Government in said action No. 2469 P. H. Civil.

Said lease was executed on United States Standard Form No. 2 (Revised), approved by the Secretary of the Treasury May 6, 1935.

That said lands so leased are depicted on the map hereinabove set forth as "N O Y (R) 35239 U. S. D. C. No. 2469-P. H." and a portion thereof are and were tide and submergd lands owned by the City of Los Angeles.

On August 1, 1944, the Secretary of Navy, in advising the Attorney General of the United States of the execution of said lease and in requesting the dismissal of said proceedings entitled "United States of America v. 5.399 Acres of Land, *et al.*", said:

> "It has now been determined that the acquisition of a temporary estate in the lands embraced by the above proceeding will be satisfactory. A lease has accordingly been executed by the United States through the Navy Department and the City of Los Angeles, through its Board of Harbor Commissioners. The City of Los Angeles has assumed, in the lease, the obligation of making settlements with any third persons for claims in the leased premises."

3. An action entitled *"United States of America v. Certain Parcel of Land in the City of Los Angeles, et al., defendants"* (being Civil No. 2597-B) was commenced in the District Court of the United States for the Southern District of California, Central Division, by the filing of a complaint in condemnation on November 25, 1942.

The United States of America appeared in said action, as alleged in said complaint, by a Special Assistant to the Attorney General at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Maritime Commission.

By said action the Government sought to condemn certain lands, two parcels of which were tide and submerged lands owned by the City of Los Angeles and under the jurisdiction of the Harbor Department thereof. Said two parcels are depicted on the map hereinabove set forth as "U. S. D. C. No. 2597-B."

In referring to said lands owned by the City of Los Angeles, the Government alleged in said complaint as follows:

> "That the apparent and presumptive owner of parcels 10, 11 and 12 is the defendant, City of Los Angeles."

Upon the filing of said complaint and upon the date thereof an order for immediate possession was issued by said Court and thereupon and pursuant thereto the Government entered upon and took possession of said land.

By a "STIPULATION OF FACTS PURSUANT TO PRETRIAL HEREIN" filed in said action on September 6, 1945, the plaintiff and the City of Los Angeles, acting by and through their respective counsel, stipulated as follows:

> "That the defendant, City of Los Angeles, on or about November 24, 1942, and at all times since, has been the owner in fee simple absolute of the property designated in the complaint on file herein as parcels 10 and 11. . . ."

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JAN 28 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. ~~12~~ 6 Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA

PART II

ROBERT W. KENNY,
600 State Building, San Francisco,
Attorney General of the State of California.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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IV.
City of Santa Barbara.

(I)

The City of Santa Barbara was established and its boundaries were fixed in the following manner:

1. The Town of Santa Barbara was incorporated by Act of the Legislature of the State of California approved April 9, 1850 (Stats. 1850, Ch. 68). Said Town of Santa Barbara was successor to The Pueblo of Santa Barbara established under the laws of Spain and the Republic of Mexico.

2. The City of Santa Barbara was incorporated by Act of the Legislature of the State of California approved April 18, 1860 (Stats. 1860, p. 197), as amended by Act of the Legislature approved March 10, 1874 (Stats. 1874, p. 330). The 1874 amendment established the southwesterly boundary of the City of Santa Barbara as proceeding southwesterly along Salinas Street

> "to a point in the Santa Barbara Channel one-half mile distant from the shore; thence westerly, parallel with and one-half mile distant from the shore to a point opposite the southwest line of Robbins Street; thence northwest following the direction of the southwest line of Robbins Street, to the point of beginning."

3. A Freeholders' Charter was adopted for the City of Santa Barbara pursuant to the provisions of Article XI, Section 8, of the Constitution of California and was approved by the Legislature on February 20, 1899 (Stats. 1899, p. 450), with its southwesterly boundary extending one-half mile into the Pacific Ocean and Santa Barbara Channel and running one-half mile distant from and parallel with the shore, as established by the Legislature in the year 1874, as aforesaid. Said Charter was

amended in 1917 (Stats. 1917, p. 1825), with its southwesterly boundary extending one-half mile into the Santa Barbara Channel and running along a line

> "parallel to and one-half mile outside of the shoreline of the Santa Barbara Channel."

The present Charter of the City of Santa Barbara approved by the Legislature on January 19, 1927 (Stats. 1927, p. 2064) continued the boundaries of the city as established at the time said Charter of 1927 took effect.

(II)

Grants of all tide and submerged lands within its city boundaries were made by the State of California to the City of Santa Barbara as follows:

1. The City of Santa Barbara was granted all tide and submerged lands situated within the Pacific Ocean and Santa Barbara Channel thereof extending as far as the pierhead line, as established from time to time by the Federal Government, by Act of the Legislature of the State of California approved April 16, 1925 (Stats. 1925, p. 181), to be held by said City for harbor and park purposes, and restraining the City from making grants thereof except as therein provided. Said Legislative grant reads, in part, as follows:

> "There is hereby granted and conveyed to the City of Santa Barbara * * * all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands (whether filled or unfilled) situated in and upon that portion of the Pacific Ocean, known as Santa Barbara Channel, in said County and lying between the line of mean high tide and the pierhead line of said Bay, as the same has been or may hereafter be established by the

Federal Government, and between the prolongation of the west boundary line of the City of Santa Barbara into the Pacific Ocean and the prolongation of the east boundary line of said City of Santa Barbara into the said Pacific Ocean * * *."

2. Said grant to the City of Santa Barbara was further extended by Act of the Legislature approved January 29, 1937 (Stats. 1937, p. 73), amending said legislative grant approved April 16, 1925, as aforesaid by

(a) granting and conveying to the City of Santa Barbara the title of the State of California

> "held by said State by virtue of its sovereignty in and to all tidelands and submerged lands bordering upon and lying below the Pacific Ocean, which are within the corporate limits of said City and seaward of the mean high tide line of the Pacific Ocean as the same now exists"

to be held by said City in trust for harbor and park purposes. Said grant excepted and reserved to the State of California all deposits of minerals, including oil and gas, in the lands granted by said Act;

(b) declaring that all reclaimed or filled land or lands formed by accretions due to artificial obstructions lying within the City of Santa Barbara and seaward of the mean high tide line of the Pacific Ocean as it existed on April 16, 1925, bounded on the seaward side by the mean high tide line of the Pacific Ocean existing on the date of said 1937 Act to be free from all trusts and restrictions imposed upon said lands in said 1925 legislative grant, except that the City shall not grant or alien any part thereof, with the right of the City to use or lease said land in parcels not to exceed ten acres to any one person for limited periods not to exceed 25 years; and

(c) authorizing the City of Santa Barbara to convey to the State of California a parcel of described reclaimed or filled tide or submerged lands for the construction and maintenance as a Stadium for Santa Barbara State College.

(III)

1. Commencing in the year 1926, the City of Santa Barbara constructed a breakwater generally described as extending northwesterly into the Pacific Ocean and Santa Barbara Channel thereof. Application was made in the month of August, 1926, by the City to the United States War Department for a permit to construct the breakwater, which said permit was thereupon granted to the City. Thereafter, and in the year 1929, the City of Santa Barbara extended its then existing breakwater northwesterly from the western end of the breakwater to the shore and extended the breakwater easterly from its easterly end a distance of approximately 800 feet. In the month of July, 1929, the City made application to the United States War Department for a permit to extend said breakwater, which permit was thereupon granted to the City by the War Department. Said breakwater and its extension were completed in the year 1929. The approximate cost of the original construction and extension of said breakwater is $750,000.00.

2. By reason of the construction of the Santa Barbara breakwater large portions of the tide and submerged lands formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, and situated within the City limits, were filled by sand and other materials and thereby artifically reclaimed. This condition resulted in the legislation approved January 29, 1937, aforesaid.

(IV)

Portions of the tide and submerged lands were leased by the City of Santa Barbara to the State of California as follows:

1. An indenture of lease was entered into under date of March 24, 1938, between the City of Santa Barbara as lessor and the State of California as lessee of a 5.99-acre parcel of reclaimed tide and submerged lands formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, and described in said lease as beginning at a designated point on the line of ordinary high-water line of the Pacific Ocean as given in a certain 1876 deed, thence 355 feet southeasterly into the Pacific Ocean, thence 735 feet northeasterly in the Pacific Ocean, thence 355 feet northwesterly to a point on the 1876 ordinary high-water line of the Pacific Ocean.

Said lease provided:

(a) that it extend for a term of 99 years;

(b) that the State shall improve the land by erection of the Stadium for Santa Barbara State College at a cost of $30,000 within three years; and

(c) that the lease was made in accordance with the Act of the Legislature granting tide and submerged lands to the City of Santa Barbara approved April 16, 1925, as amended.

Said lease was duly recorded on August 3, 1938, in Volume 438, page 498, Official Records in the Office of the County Recorder of the County of Santa Barbara.

Said Stadium was constructed by the State of California for the Santa Barbara State College, a branch of the University of California.

Said lease dated March 24, 1938, is numbered 6779 in the files of the City of Santa Barbara and is depicted on the map of this area next hereinafter set forth.

(V)

A Naval Armory site was granted to the United States by the City of Santa Barbara covering tide and submerged lands in the Pacific Ocean, since reclaimed, adjoining said Stadium site, in the following manner:

1. A grant to the United States of America by the City of Santa Barbara for a Naval Reserve Armory site of a .918-acre parcel of tide and submerged lands, formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, since artificially filled and reclaimed as a result of the construction of the Santa Barbara Breakwater as aforesaid, was authorized by Act of the Legislature of the State of California approved December 7, 1940 (Stats. 1941, p. 390). Said Act particularly described said .918-acre parcel as adjoining the easterly corner of the tract of land leased to the State of California by the City of Santa Barbara on March 24, 1938, for a Stadium site. Said Act was declared to be an emergency measure necessitated as therein stated by the need for a prompt military and naval armament program and further stated that

> "A portion of the land heretofore granted by the State to the City of Santa Barbara is needed by the United States Government for purposes in connection with this program. In order that the program of armament and protection will not be delayed and that adequate provision for the preservation of the peace of this country can be made as promptly as possible, it is essential that this Act take effect immediately."

2. Said .918-acre parcel of tide and submerged lands, formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, was granted to the United States by the City of Santa Barbara by deed dated February 26, 1942,

and recorded on September 18, 1942, in Volume 556, page 410, Official Records of said County.

Said deed was authorized by resolution of the City Council of the City of Santa Barbara of February 26, 1942.

3. On February 18, 1942, the United States, through its Navy Department, addressed a communication to the Mayor and City Council of the City of Santa Barbara, requesting that the City furnish to the United States a preliminary certificate of title in accordance with an enclosed form for submission to the Attorney General of the United States for his opinion as to title, said letter stating, in part, as follows:

> "As a part of the arrangements to be undertaken by you, it will be necessary for you to furnish, at your expense, a preliminary certificate of title in accordance with the enclosed form, together with the deed conveying the subject property to the United States for submission to the Attorney General of the United States for his opinion as to title. For transmission to the Office of the Judge Advocate General of the Navy, it is requested that this officer be furnished with a correct description of the property, together with a map or plat with the description of the land delineated thereon, including evidence of the authority of the City of Santa Barbara to convey the subject property to the United States of America."

4. Under date of May 5, 1943, the Secretary of the Navy addressed a communication to the Mayor and Council of the City of Santa Barbara accepting on behalf of the United States the lands conveyed by said deed dated February 26, 1942. A copy of said acceptance by the Secretary of the Navy on behalf of the United States on May 5, 1943, is set forth as follows:

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON

MAY 5 1943

Gentlemen:

Pursuant to the authority vested in the Secretary of the Navy by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), the Secretary of the Navy hereby accepts on behalf of the United States the interests in lands given in the following instruments executed by and under direction of the Council and Mayor of the City of Santa Barbara:

1. Deed dated February 26, 1942, authorized by resolution of February 26, 1942.
2. Resolution No. 1722, dated June 2, 1942, as altered by Resolution No. 1729, dated June 11, 1942, and as supplemented by Resolution No. 1745, dated September 17, 1942.
3. Resolution No. 1705, dated February 19, 1942, as altered by Resolution No. 1738, dated July 2, 1942.

The Navy Department appreciates the cooperation which has been extended in these matters.

Very truly yours,

James Forrestal

James Forrestal
Acting

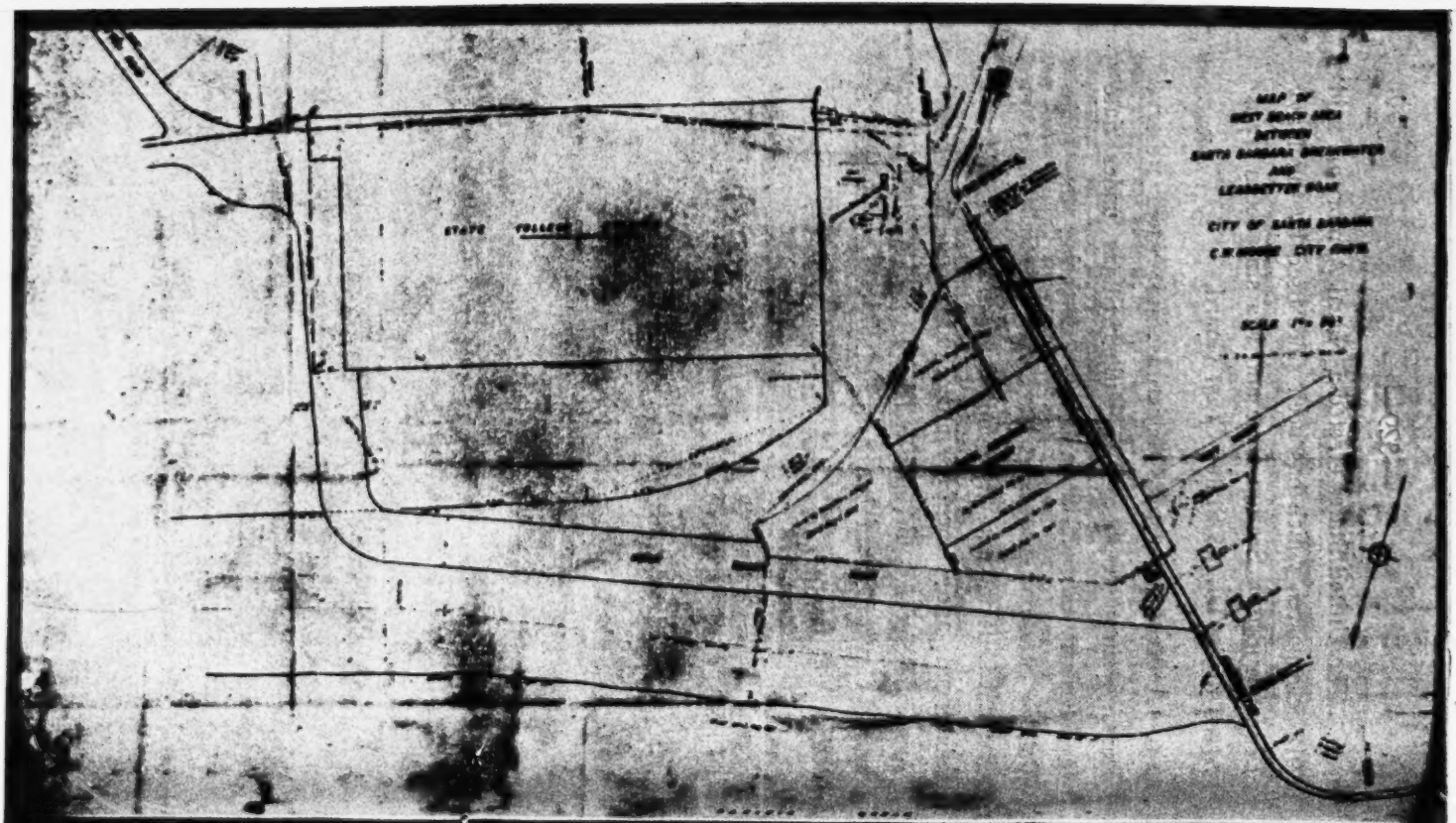
The Mayor and Council of the
City of Santa Barbara,
Santa Barbara, California

FILED May 6 - 1943
Faye Canfield
CITY CLERK

DEPUTY CITY CLERK

5. The United States erected a Naval Armory on said .918-acre parcel, which has been since used by the Navy Department as a Section Base and has since been transferred to the United States Coast Guard.

6. A copy of a map depicting said Naval Reserve Armory site deeded to the United States under date of February 26, 1942, and also depicting the State College Stadium leased to the State of California on March 24, 1938, and also depicting parcels of tide and submerged lands since reclaimed, adjoining said Naval Armory Reserve, subsequently leased to the United States by the City of Santa Barbara, as hereinafter alleged, is set forth as follows:



(VI)

A further grant of an .89-acre parcel adjacent to said Naval Reserve Armory was made to the United States by the City of Santa Barbara of tide and submerged lands in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, at the request of the United States Navy, which grant was duly accepted by the United States, in the following manner:

1. At the request of the Navy Department the City Council of the City of Santa Barbara adopted its Resolution No. 1705 on February 19, 1942, granting to the United States an .89-acre parcel for the duration of the present World War surrounding said Naval Reserve Armory site, waiving rental therefor. Said resolution recited that the Naval Armory was then being built by the United States on said Armory site; that the Navy Department required additional real property adjacent to said Armory site for the operation of the Section Base in Santa Barbara; and stated that:

> "Whereas, the City of Santa Barbara *is the owner* of said property described in said Exhibit A [the .89-acre parcel]."

2. Said Resolution No. 1705 was transmitted to the Navy Department, which, in turn, forwarded it to the Judge Advocate General of the Navy. In response thereto on June 19, 1942, the Navy Department addressed a communication to the Mayor and City Council of the City of Santa Barbara acknowledging receipt of said Resolution No. 1705 and stating that the Judge Advocate General of the Navy requested said resolution be amended or a new resolution be adopted to provide that the United States may, at the termination of the present war, remove or otherwise dispose of improvements placed by the Govern-

ment upon the property. There was transmitted with said letter of June 3, 1942, a suggested form of resolution. Said Navy Department letter stated in part as follows:

> "There is enclosed herewith for your consideration a suggested form of resolution which may be adopted or revised as desired to grant to the United States of America, the right to remove or otherwise dispose of structures or improvements placed upon the land."

In response thereto the City of Santa Barbara addressed a communication to the Navy Department on June 29, 1942, proposing a modification of Resolution No. 1705 granting the United States the right to remove improvements constructed upon the property and requiring the United States to restore the property to its original condition upon being vacated and also granting an option to the City to purchase said improvements upon termination.

On June 29, 1942, the Navy Department addressed a communication to the City Attorney of the City of Santa Barbara in response to said letter of June 22, 1942, advising that there would be no objection to the inclusion in the modified resolution of a clause requiring the Government to restore the property to its original condition upon being vacated; but objecting to an option permitting the City to purchase improvements for the stated reason that such would not be in accordance with existing law. Said letter then stated:

> "In this connection it is understood that Senator Hiram Johnson of California is preparing and will introduce legislation during the present Congress which will permit *the owners and former owners of property occupied by the Government* during the war to purchase their property and any improvements

erected thereon after the termination of the present war."

(VII)

Another grant of a 0.78-acre parcel of tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof was made to the United States by the City of Santa Barbara, at the request of the United States Navy, which grant was duly accepted by the United States, in the following manner:

1. The United States, by its Navy Department, requested the City Council of the City of Santa Barbara to grant, and said City Council thereupon adopted its resolution No. 1722 on June 2, 1942, granting, to the United States the use of a described parcel of 0.78 acres of tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, for the duration of the present World War, to be used as a part of said Section Base for the Navy. Said parcel immediately adjoins to the north the Naval Reserve Armory site deeded to the United States by the City of Santa Barbara as aforesaid.

Said resolution No. 1722 recites in part that:

"The City of Santa Barbara *is the owner* of said property described in said Exhibit B [the 0.78-acre parcel]."

2. A request from the United States, through its Navy Department, for a lease of this 0.78-acre parcel was contained in a letter dated June 1, 1942, from the United States Navy to the Mayor of the City of Santa Barbara, stating, in part, as follows:

"The functioning of the Section Base, Santa Barbara, will be greatly facilitated after the plot of land

described in the Enclosure A is leased by the City of Santa Barbara to the United States Navy in the same manner as the similar tract of land immediately south of the original tract that was deeded by the City of Santa Barbara to the United States Navy. It is therefore requested that proper action be taken by the City of Santa Barbara to lease to the United States Navy the land described in Enclosure A, providing this can be done without cost to the Navy."

3. The Secretary of the Navy on October 20, 1942 addressed a communication to the Mayor and City Council of the City of Santa Barbara, referring to Resolution No. 1722, and stated that certain real property adjacent to the United States Naval Section Base at Santa Barbara was thereby granted to the United States Navy for the duration of the present emergency. The Secretary of the Navy stated that the adoption of said resolution was appreciated by the Navy as rendering the fullest possible cooperation and assistance. The Secretary of the Navy then accepted the grant contained in Resolution No. 1722 by stating in said letter that:

"The above mentioned resolutions are hereby accepted on behalf of the Navy Department."

4. Said 0.78-acre parcel the use of which was granted by said resolution No. 1722 was, prior to the erection of the Santa Barbara breakwater as above alleged, a part of the Pacific Ocean and Santa Barbara Channel thereof.

(VIII)

A still further grant to the United States by the City of Santa Barbara of an 0.80-acre parcel adjoining said Naval Reserve Armory on the west, consisting of tide and submerged lands in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, made at the request of the United States Navy and duly accepted by the United States, was made under the following circumstances:

1. Pursuant to request from the United States, by its Navy Department, the City Council of the City of Santa Barbara adopted its resolution No. 1737 on July 2, 1942, thereby granting to the United States the use of a particularly described 0.80-acre parcel. Said parcel immediately adjoins the Naval Reserve Armory site deeded to the United States as aforesaid. Said resolution recites in part that:

> "The City of Santa Barbara *is the owner* of said property described in said Exhibit 'C' [being the 0.80 acre parcel]."

Said resolution granted to the United States the right to erect structures and buildings upon the property in connection with its Section Base. Said grant was made for the duration of the present war. It granted the United States the right to remove or otherwise dispose of structures or improvements placed by the United States upon the property at the termination of the use of the property

and obligated the United States to restore the property to its original condition.

2. The Navy Department on behalf of the United States on October 2, 1942 addressed a communication to the Mayor of the City of Santa Barbara, referring to the grant to the United States made by said resolution No. 1737, and stated that the Navy Department appreciated the cooperation of the City of Santa Barbara and that the Navy Department

> "accepts the grant of the above described land for the duration of the several wars in which the United States is presently engaged."

3. On December 22, 1942, the Secretary of the Navy addressed a communication to the Mayor of the City of Santa Barbara likewise acknowledging receipt of the grant to the United States by said resolution No. 1737 dated July 2, 1942, and stated in part that:

> "The Navy Department appreciates the interest and cooperation of the City of Santa Barbara and on behalf of the United States, accepts the grant above referred to."

4. The 0.80-acre parcel the use of which was granted to the United States as above set forth was, prior to the construction of the Santa Barbara breakwater, a part of the Pacific Ocean and Santa Barbara Channel thereof.

V.

City of San Diego.

(I)

The City of San Diego was established and its westerly boundary was fixed in the following manner:

1. The City of San Diego was incorporated by the Legislature of the State of California in the year 1850 (Stats. 1850, p. 121).

2. The City of San Diego was reincorporated by Act of the Legislature of the State of California, approved April 1, 1876 (Stats. '75-76, p. 806). By said Act, the boundaries of said City were therein set forth as including all the tract of land known as the "Pueblo of San Diego" included in a designated survey made in the year 1858,

> "except the water-front line on the bay, and this shall be Ship's Channel of the said bay; and the municipal jurisdiction shall extend to said limits and over the waters of said bay, and into the ocean to the extent of one marine league from the shore."

3. A Freeholders Charter was adopted by The City of San Diego pursuant to the provisions of Article XI, Section 8, of the Constitution of California and was approved by the Legislature of the State of California on March 16, 1889 (Stats. 1889, page 643).

4. A new Charter was adopted by The City of San Diego approved by the Legislature of the State of California on April 24, 1931 (Stats. 1931, page 2838). By said Charter the boundaries of The City of San Diego as then

established were continued in effect. By Section 3 of said Charter, it is provided that

> "The municipal jurisdiction of The City of San Diego shall extend to the limits and boundaries of said City and over the tidelands and waters of the Bay of San Diego, and into the Pacific Ocean to the extent of one marine league."

The present Charter of The City of San Diego provides for the establishment of a Harbor Commission, which Commission

> "shall have jurisdiction, supervision, management and control of the Bay of San Diego fronting upon The City of San Diego and within the jurisdiction of said City, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide within the limits of said City. Except, however, such tide and submerged lands which have heretofore or which hereafter may be transferred to the exclusive control of the United States. . . ."

(II)

Tide and submerged lands within the boundaries of The City of San Diego were granted to it by the Legislature of the State of California.

1. The Act of the Legislature approved May 1, 1911, (Stats. 1911, p. 1357) recited in part that

> "Whereas, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of navigation, commerce and fishing;"

Said Act thereupon

> "granted and conveyed to the city of San Diego * * * all of the lands situate on the city of San Diego side of said bay, lying and being between the line of mean high tide and the pier head line in said bay, as the same has been or may hereafter be established by the federal government, and between the prolongation into the bay of San Diego to the pier head line of the boundary line between the city of San Diego and National City, and the prolongation into the Bay of San Diego to the pier head line of the northerly line of the United States military reservation on Point Loma."

Said Act prohibited all grants or conveyances of the lands thereby conveyed but authorized certain types of leases for limited periods. Said conveyance was made upon condition that The City of San Diego within a specified period shall issue bonds for harbor improvement purposes in an amount not less than $1,000,000 and commence work of improvement within a designated period.

2. Said legislative grant of tide and submerged lands to The City of San Diego by the Act approved May 1, 1911, as aforesaid, was amended in the year 1913 (Stats. 1913, p. 77), in the year 1915 (Stats. 1915, p. 1323), again in 1917 (Stats. 1917, p. 1943), in 1929 (Stats. 1929, p. 1058), in 1943 (Stats. 1943, Ch. 70), and in 1945 (Stats. 1945, Ch. 222).

3. The ownership of the tide and submerged lands by The City of San Diego, as successor of the State of California through said Act of the Legislature of May 1, 1911, as amended, was reported to the Congress by the Chief of Engineers and Secretary of War under date

of January 21, 1920, as contained in House Document No. 652, 66th Congress, 2nd Session, page 1917. Said report was rendered to Congress pursuant to the requirement of the Act of Congress approved July 18, 1918, requiring a report on water terminal and transfer facilities including among other things a statement of "whether such terminals are publicly or privately owned." Said report stated in this connection that:

> "The *City of San Diego owns* the tide lands along its entire water front, about 11 miles in extent which were granted from the State by act of legislature upon condition that the City expend the sum of $1,000,000 on harbor improvements in the bay of San Diego. These improvements have been made, at a total cost of $1,500,000, and consist of one municipal pier 130 feet by 800 feet; also 2750 feet of reinforced concrete seawall; and the dredging of approximately 2,000,000 cubic yards of material."

Likewise, the Commission on Navy Yards and Naval Stations reported to Congress in its report dated January 31, 1917 (House Document No. 1946, Part 3, *supra*, page 30) that:

> "Since 1911 the City of San Diego has owned its waterfront and the tide lands adjacent thereto—about 1350 acres in extent."

(III)

The City of San Diego was authorized from time to time by the Legislature of the State of California to grant parcels of said tide and submerged lands within The City of San Diego to the United States of America, or such grants to the United States were ratified by said Legislature.

1. In the year 1917 The City of San Diego was authorized by the Legislature of the State of California to convey to the United States a 500-acre parcel of tide and submerged lands. (Stats. 1917, p. 1943.) Said Act declared that The City of San Diego had completely performed all the conditions set forth in the Act of May 1, 1911, as amended,

> "and that the title to the tide lands therein described is vested in The City of San Diego, subject only to the public trusts therein enumerated; *provided, that The City of San Diego is hereby authorized to convey to the United States of America 500 acres, more or less, of said lands, free of said public trusts.*"

(a) By Act of Congress approved August 29, 1916, the Secretary of the Navy was authorized to purchase a 232-acre tract of upland and marshland fronting on the Bay of San Diego from San Diego Securities Company, the then owner, for a sum not in excess of $250,000, to be used for an advanced base, expeditionary, and aviation purposes. A condition of this appropriation by Congress was that The City of San Diego donate to the United States 500 acres of adjoining tide and submerged lands, known as Dutch Flats, for the purpose of establishing a naval base thereon.

(b) By Act of Congress approved July 27, 1916, a sum of $220,000 was appropriated by Congress for the improvement and maintenance of San Diego Harbor, but upon the condition that the 500-acre parcel of tide and submerged lands known as Dutch Flats, above-mentioned, likewise be donated by The City of San Diego to the United States. The improvement contemplated by said Act of Congress consisted of dredging in the Bay of San

Diego in the vicinity of the municipal pier and depositing the dredged materials in the 232-acre tract of marshland and upland above mentioned.

Said Act of Congress approved July 27, 1916 (Stats. 1939, p. 404) reads in part, as follows:

> "San Diego Harbor, California: For improvement and maintenance $220,000, in accordance with House Document Number six hundred forty-eight, sixty-fourth Congress, first session: Provided, this appropriation is made on the condition precedent *that the City of San Diego shall donate to the United States Government five hundred acres of tide lands known as Dutch Flats.*"

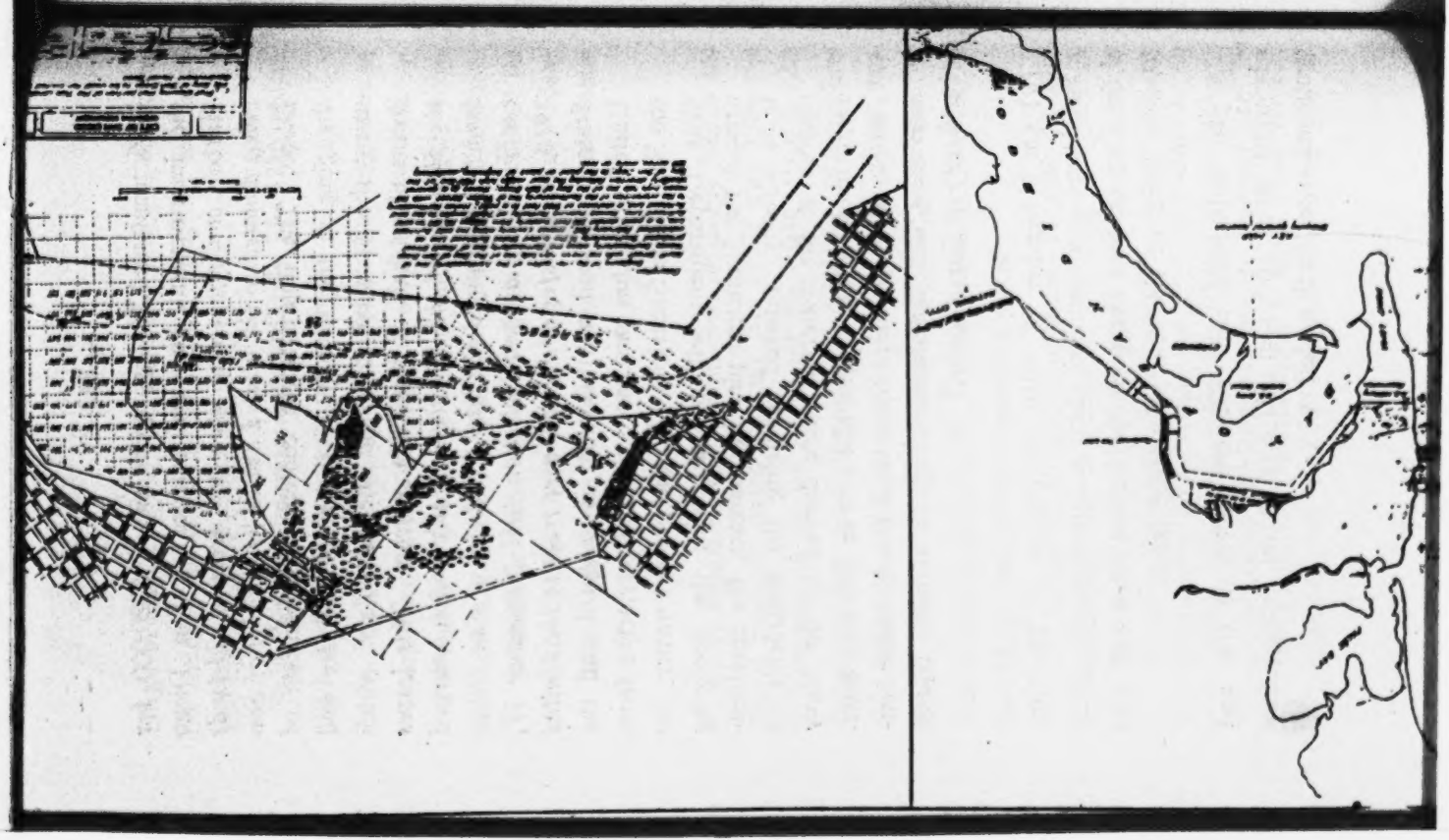
(c) A report of the Commission on Navy Yards and Naval Stations, dated January 31, 1917, was submitted to Congress in House Document No. 1946, Part 3, 64th Congress, 2nd Session, page 12. Said report considered said 500-acre tract known as Dutch Flats, above mentioned, and the condition imposed by Congress requiring that it be conveyed to the United States by The City of San Diego, and in this connection stated:

> "An act of Congress, approved August 29, 1916, authorized the Secretary of the Navy to purchase 232 acres of land fronting on San Diego Bay, for not over $250,000, to be used for advance-base, expeditionary, and aviation purposes; *provided the city of San Diego donated to the United States 500 acres of adjoining tidelands, known as Dutch Flats,* 'for the purpose of establishing a naval base thereon.' Similarly, an act of Congress, approved July 27,

1916, contained an appropriation of $220,000 for the improvement and maintenance of San Diego Harbor, *contingent also upon 500 acres of tidelands being donated to the United States by the city of San Diego.* The improvement contemplated consists of dredging in the vicinity of the municipal pier and using the material to fill in the marshland which forms about half of the 232-acre tract. *This leaves the filling in of the 500 acres of tide and submerged land to be arranged for later. The city of San Diego confirmed, by a special election held November 17, 1916, the transfer of the 500-acre tract to the United States.* As soon as this tract is accepted and the United States has purchased the 232-acre tract from the San Diego Securities Co., the present owner, the War Department will proceed with the dredging around the municipal pier by contract, the specifications already prepared requiring the contractor to dispose of the material where desired by the Navy Department, either on the 232-acre or 500-acre tract. *The question of title to these lands is now under consideration and investigation by the United States attorney at Los Angeles."*

(d) On November 17, 1916, the electors of The City of San Diego at a municipal election authorized the grant of the City of San Diego to the United States of said 500-acre parcel of tide and submerged lands.

A plat delineating said 500-acre parcel of tide and submerged lands and said 242-acre parcel hereinbefore mentioned, is set forth as follows:



2. At the request of the United States, a naval supply base and landing site was granted and conveyed to the United States by The City of San Diego by deed dated September 3, 1919. The land granted contained approximately 1½ acres of reclaimed tide and submerged lands, in said deed described as "Block 14 and the part lying northwest of said block of the Municipal Tidelands Subdivision, Tract No. 1, according to the map thereof filed in the office of the City Clerk of said The City of San Diego May 18, 1916."

Said deed of September 3, 1919 was thereafter ratified, confirmed and approved by the electors of The City of San Diego voting at a special municipal election of August 3, 1920, wherein the proposition of approving said grant was submitted to the electorate.

The grant effected by said deed of September 3, 1919, was regranted and confirmed by Act of the Legislature of the State of California approved April 28, 1921 (Stats. 1921, p. 55).

3. At the request of the United States a naval hospital site was granted by deed dated September 3, 1919, by The City of San Diego to the United States consisting of a 17.04 acre parcel of former tide and submerged lands since reclaimed. Said deed was subsequently ratified and approved by the electors of The City of San Diego at a special election held August 3, 1920. Said grant was confirmed and regranted by the Legislature of the State of

California by Act approved April 28, 1921 (Stats. 1921, p. 54).

4. At the request of the United States, a naval training station site was granted on October 9, 1919, by The City of San Diego to the United States consisting of a parcel of tide and submerged lands in the Bay of San Diego lying between the line of mean high tide and the United States Bulkhead line. Said deed of October 9, 1919 was thereafter ratified and approved by the electors of The City of San Diego at a municipal election held August 3, 1920. Said grant was likewise confirmed and validated by the Act of the Legislature of the State of California, approved April 28, 1921 (Stats. 1921, p. 55).

5. The City of San Diego executed a deed dated September 3, 1919, granting to the United States a site for an emergency fleet plant, naval repair station, shipyard, drydock station or similar purposes, covering certain described tide and submerged lands in the Bay of San Diego lying between the line of mean high tide of said Bay and the United States Bulkhead line. Said deed of September 3, 1919 was likewise ratified and approved by the electors of The City of San Diego at a municipal election held August 3, 1920. Said deed was confirmed and validated by the Legislature of the State of California by Act approved April 28, 1921 (Stats. 1921, p. 56).

Said parcel of tide and submerged lands was thereafter used by the United States as and for its Naval Destroyer Base in San Diego Bay.

Thereafter, the United States, through its Commandant of the Eleventh Naval District, communicated with the Mayor and City Council of the City of San Diego, requesting an additional grant of a parcel lying to the west of and adjoining said Naval Destroyer Base, and in said communication stated as follows:

> "As you know, the Naval Destroyer Base in San Diego is located on land donated by the City in 1919, being a part of a tract leased to the United States Shipping Board Emergency Fleet Corporation in 1918.
>
> "The gift of land for naval uses followed the boundaries of the tract leased to the Emergency Fleet Corporation, except at the northwesterly end thereof, where an area of approximately 32 acres was excluded for reasons now unknown. The present status of this 32-acre tract, therefore, is under lease to the Government for a period of 50 years from 1918.
>
> "The Commandant is informed that projected development at the Destroyer Base will require additional land at the north end and that it is extremely desirable that the Government obtain the fee to the 32-acre tract above mentioned, as permanent improvements cannot be constructed on leased property."

Subsequently, a deed dated July 17, 1940, was executed by the City of San Diego, granting to the United States a 14.51-acre parcel of tide and submerged lands in the Bay of San Diego, lying to the west of and adjoining the said Destroyer Base. Said deed was authorized to be executed

by the electors of the City of San Diego at an election held on March 28, 1939.

6. The City of San Diego was authorized to convey to the United States a pier site and sites for boat landing purposes by Act of the Legislature of the State of California, approved May 17, 1923 (Stats. 1923, p. 392). The lands thus authorized to be conveyed to the United States were parcels of submerged lands. The pier site consisted of a strip 1000 feet long and 100 feet wide lying between the Bulkhead line and the Pierhead line of San Diego Bay.

The City of San Diego executed its deed dated November 26, 1923, conveying to the United States, pursuant to said Act approved May 17, 1923, three parcels, one for a pier and the others for boat landing purposes, consisting of submerged lands in the Bay of San Diego lying between the bulkhead and pierhead lines.

7. By deed dated July 17, 1940, The City of San Diego conveyed to the United States a 2.76 acre parcel of submerged lands lying between the United States Bulkhead and Pierhead lines in the Bay of San Diego immediately adjoining the Navy pier site conveyed to the United States by November 26, 1923 deed, above mentioned. Said parcel of submerged lands is a strip 1000 feet long and 120 feet wide.

8. The City of San Diego executed a deed conveying a parcel of tide and submerged lands to the United States as a site for a naval hospital lying adjacent to the naval

hospital site conveyed by deed dated September 3, 1919, above mentioned. Said grant was approved by the electors of The City of San Diego at a municipal election held March 24, 1925. Said grant was also confirmed and validated by Act of the Legislature of the State of California approved May 23, 1925 (Stats. 1925, p. 621).

9. The City of San Diego executed its deed granting to the United States as a site for pier purposes for the Navy Department a tract of submerged lands lying adjacent to the land conveyed by The City of San Diego to the United States for a drydock station or similar purpose, dated September 3, 1919, above mentioned. Said conveyance was ratified and approved by the electors of The City of San Diego at a municipal election held on March 24, 1925. Said conveyance was likewise confirmed and validated by Act of the Legislature of the State of California approved May 23, 1925 (Stats. 1925, p. 622).

10. On November 4, 1937, the City of San Diego executed a deed conveying to the United States a 5.24-acre parcel of tide and submerged lands to be used as a part of its Marine Corps Base. The grant of said 5.24-acre parcel, together with certain other lots of the City, were granted to the United States in exchange for a 60.16-acre parcel of land owned by the United States, adjoining the municipal airport.

Said deed from the City of San Diego was authorized by resolution of its City Council adopted June 8, 1937, reciting that said grant had been approved by the elec-

torate of the City of San Diego, voting thereon on May 5, 1936, pursuant to the Act of the Legislature of the State of California, approved July 14, 1929 (Stats. 1929, Chapter 808), being entitled "An Act authorizing and empowering any municipal corporation to which tidelands and submerged lands, situated within the limits thereof, have been, or may hereafter be granted by the State of California, to grant all or any portion of such lands to the United States for public or governmental (including military or naval) purposes, and validating and confirming grants of such lands made by such municipal corporations to the United States." Said deed was executed pursuant to a resolution dated June 10, 1937, of the Harbor Commission of the City of San Diego.

By Act of Congress approved March 4, 1937, the Secretary of the Navy, on behalf of the United States, was authorized to accept said deed from the City of San Diego in exchange for said 61.16-acre parcel.

Said deed was recorded in Book 737, page 95, Official Records, in the Office of the County Recorder of San Diego County.

11. The City of San Diego, as lessor, executed a lease with the United States, as lessee, dated April 10, 1941, leasing a 5.4-acre parcel of tide and submerged lands adjoining the United States Destroyer Base in the Bay of San Diego. Said parcel was situated between the line of mean high tide and the United States bulkhead line in said Bay. Said lease was recorded at the request of

the United States in Book 1207, page 220, Official Records of said County.

12. By resolution of the City Council and the Board of Harbor Commissioners of the City of San Diego, adopted December 10 and December 5, 1935, respectively, there was authorized the execution of a deed from the City of San Diego to the United States, granting a 5000 sq. ft. site of tide and submerged lands for air—and seaplane hangers. Said grant was authorized by the electors of the City of San Diego at an election held on April 23, 1935. Said deed is recorded in Book 446, page 372, Official Records of the County of San Diego.

13. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated January 1, 1941, thereby leasing three parcels of tide and submerged lands, since reclaimed, constituting a part of the San Diego municipal airport, Lindbergh Field. Said lease is recorded in Book 1223, page 347, Official Records, San Diego County.

14. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated April 10, 1941, leasing a 4.893-acre parcel of tidelands. Said lease is recorded in Book 1194, page 395, Official Records of San Diego County.

15. By indenture dated July 13, 1938, the City of San Diego granted a 1.37-acre parcel and a 1.24-acre parcel of tide and submerged lands to the United States in exchange for a grant from the United States to the City

of San Diego of a described portion of the former military reservation known as San Diego barracks. Said indenture was executed by the United States by its Secretary of the Navy. By Act of Congress approved June 20, 1938, the Secretary of the Navy was authorized to accept said grant of tide and submerged lands from the City of San Diego in consummating said exchange. Said indenture is recorded in Book 835, page 487, Official Records of San Diego County.

16. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated April 10, 1941, covering a 2.34-acre parcel of tide and submerged lands in the Bay of San Diego, to be used for Federal housing facilities. Said deed is recorded in Book 1199, page 269, Official Records of San Diego County.

17. By deed dated June 19, 1945, the City of San Diego granted to the United States an 11.23-acre parcel of tide and submerged lands adjoining the municipal airport, Lindbergh Field. Said deed was authorized by the electors of the City of San Diego at an election held on April 19, 1945. Said deed is recorded in Book 1896, page 469, Official Records of said County.

18. By deed dated August 3, 1933, The City of San Diego granted to the United States a 242-acre parcel of tide and submerged lands lying between the United States Bulkhead line and the Pier head line. Said conveyance was authorized by the electors of The City of San Diego at a municipal election held November 4, 1930. Said deed

was recorded at the request of the United States in Book 239, page 409, Official Records of San Diego County.

19. Other conveyances from The City of San Diego to the United States of former tide and submerged lands lying in the Bay of San Diego are:

Conveyance by deed dated July 13, 1938;
Conveyance by deed dated July 17, 1940;
Conveyance by deed dated September 4, 1940;
Conveyance by deed dated November 16, 1943.

VI.
City of Coronado.

(I)

The City of Coronado was established and its boundaries were fixed as follows:

1. The City of Coronado is a municipal corporation of the sixth class duly incorporated under the provisions of the Municipal Incorporation Law.

2. The ocean and bay boundaries of the City of Coronado were duly established as set forth in Ordinance No. 274 under date of February 17, 1912, as follows:

> "Beginning at a point on the boundary of said city at the low water mark on the shore of the Pacific Ocean at a point 1000 feet southeast of the southeast corner of the Hotel Del Coronado; thence due northeast along the boundary of said city across the peninsula of San Diego to low water mark on the shore of Glorietta bay; thence southeast along low water mark following the shore of Glorietta and San Diego bay to an intersection of said low water line with a line that bears north 39° east from Survey Station No. 7, said Survey Station No. 7 being one of the corners marking a tract of land sold by the Coronado Beach Company to the United States Government for coast defense purposes; thence southwest across the peninsula of San Diego to low water mark on the shore of the Pacific Ocean; thence northwest along said low water mark of the Pacific Ocean to the point of beginning."

(II)

The State of California conveyed certain tide and submerged lands to the City of Coronado.

1. By Act of the Legislature approved April 27, 1923 (Stats. 1923, p. 85) tide and submerged lands were granted to said city as follows:

> "There is hereby granted and conveyed to the City of Coronado * * * all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands (whether filled or unfilled) within the present boundaries of said city, and situate upon the Coronado side of the bay of San Diego * * * lying between the line of mean high tide and the pier head line in said bay, as the same has been or may hereafter be established by the Federal Government, and between the prolongation of the easterly boundary line of the City of Coronado into Glorietta bay, a portion of the said San Diego bay, and the prolongation of the westerly boundary line of the City of Coronado into Spanish bight, a portion of said San Diego;"

to be held in trust for harbor purposes and for promotion of commerce, navigation, fishery and bathing purposes. Said grant restricted the City of Coronado from making conveyances or leases thereof except upon specified conditions.

2. Said legislative grant was amended by Acts of the Legislature of the State of California in 1929 (Stats. 1929, p. 1172); in 1933 (Stats. 1933, p. 2217); and in 1939 (Stats. 1939, Ch. 893).

(III)

The City of Coronado has granted to the United States leases and other interests in and to portions of its tide and submerged lands, from time to time, and the United States has condemned fee interests and leasehold interests in and to portions of the tide and submerged lands of the City of Coronado.

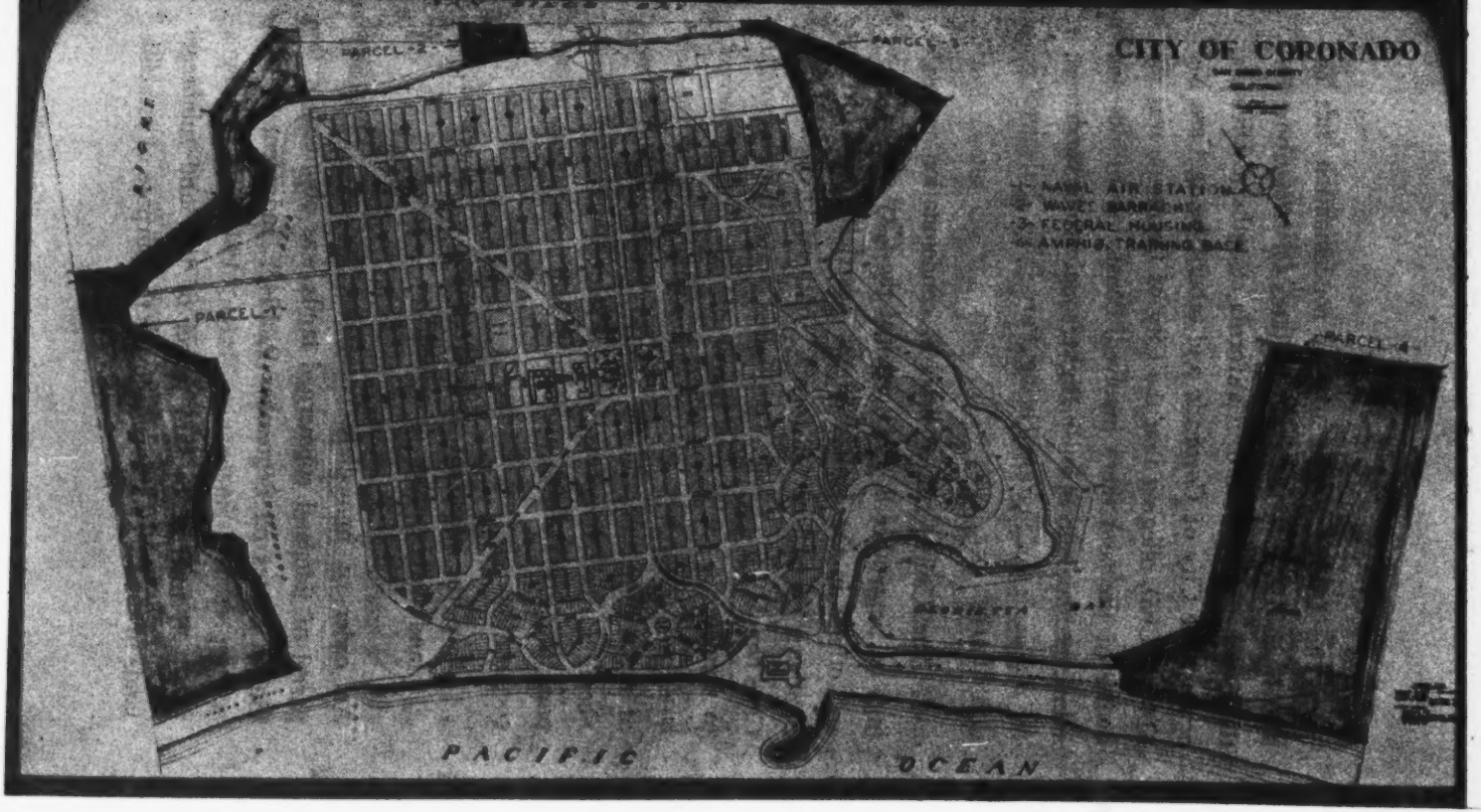
Three of these transactions, involving separate parcels, are hereinafter described and are set forth on the map next hereinafter set forth:

Parcel 1 shows a condemnation of tide and submerged lands in Spanish Bight for Naval Air Station.

Parcel 3 shows a condemnation of a leasehold interest for a Federal Housing Project.

Parcel 4 shows a lease for an Amphibious Training Base.

The map depicting these parcels is set forth as follows:


CITY OF CORONADO
PARCEL-2
PARCEL-3
PARCEL-1
PARCEL-4
PACIFIC
OCEAN

1. The United States filed a condemnation suit on March 22, 1944, in the United States District Court for the Southern District of California, Southern Division, against the City of Coronado and others, being Case No. 414-SD-Civil, alleging that the City of Coronado was the owner of the land there involved, consisting of tide and submerged lands in Spanish Bight, sought to be condemned for a Naval Air Station (being Parcel No. 1 depicted on said Map).

2. The United States brought condemnation proceedings on September 8, 1943, against the City of Coronado and others in the United States District Court for the Southern District of California, Southern Division, being Case No. 319-SD-Civil. The United States thereby sought to condemn a 56.99-acre parcel of tide and submerged lands within the City of Coronado, lying between the line of mean high tide and the United States Bulkhead line, (being Parcel No. 3 depicted on said Map), alleging, in part, that the City of Coronado and two named private corporations

> "are the apparent and presumptive owners of the land hereinbefore described."

An order of immediate possession for said 56.99-acre parcel of tide and submerged lands was obtained by the United States on September 9, 1943. Judgment of condemnation was entered in March, 1945, condemning a leasehold interest in said parcel of tide and submerged lands in the City of Coronado for the purpose of establish-

ing and erecting a Federal Housing Project. By the terms of said judgment, the United States was ordered to pay annual rental to the City of Coronado of $3900 per year for the use of said land.

3. On May 15, 1943, a lease was entered into between the City of Coronado, as lessor, and the United States, as lessee, leasing a 134-acre parcel of tide and submerged lands owned by the City of Coronado, to be used by lessee as an Amphibious Training Base for the United States Navy (being said Parcel No. 4 depicted on said Map). Said lease was for a period of one year with a right of renewal, but not beyond six months after cessation of hostilities. The rental was $1.00 per year and the cost of publication of the City Ordinance required by State law in connection with the lease. As an additional consideration from the United States to the City of Coronado for this lease, Paragraph 12 of said lease provides as follows:

> "12. As an additional and further consideration for the lease of the herein mentioned premises, it is agreed that at the expiration or termination of this lease as herein provided, title to all improvements placed upon or within the leased land, including all sewer disposal facilities; water pipes, power and light distribution lines; streets; sidewalks; trees; shrubs and other landscaping, shall pass to and vest in the Lessor; provided, with respect to each such improve-

ment, that the cost of removing the same and restoring the property to the conditions described in paragraph 8 hereof shall equal or exceed the salvage value of such improvement."

United States Standard Form Lease No. 2 was used in the execution of said May 15, 1943, lease.

Ordinance No. 698 of the City of Coronado was adopted by the City Council of the City of Coronado on September 21, 1943, authorizing the Mayor of said City, on behalf of the City, to enter into said lease with the United States describing:

> "Those premises consisting of said public lands and lands adjacent thereto conveyed to the City of Coronado by the State of California under the provisions of that certain Act of the Legislature entitled 'An Act conveying certain tidelands and lands lying under navigable waters situated in the Bay of San Diego to the City of Coronado in furtherance of navigation, commerce and fisheries, and providing for the government, management and control thereof,' approved April 27, 1923, as amended to date: Said tidelands and other public lands herein leased being more particularly described as follows: . . ."

Said Ordinance No. 698 is the ordinance referred to in the lease which the United States, as lessee, was required to pay the costs of publication.

VII.
City of National City.

(I)

The City of National City was organized and its boundaries established as follows:

1. The City of National City is a municipal corporation incorporated on September 17, 1889, as a city of the sixth class under the Municipal Incorporation Law of the State of California.

2. The boundaries of the City of National City were established in its Act of Incorporation on September 17, 1889, as adjoining the south boundary line of the City of San Diego, with its westerly boundary line extending to the line of ship's channel in the Bay of San Diego.

(II)

Tide and submerged lands in the Bay of San Diego were granted to the City of National City by the State of California as follows:

1. By Act of the Legislature of the State of California approved March 21, 1917 (Stats. 1917, p. 18), the grant was made reading, in part, as follows:

> "There is hereby granted and conveyed to the City of National City . . . all of the land situate on the City of National City side of said Bay, lying and being between the line of mean high tide and the pierhead line in said Bay, as the same has been or may hereafter be established by the Federal Government and between the prolongation into the Bay of San Diego to the pierhead line of the boundary line between the City of National City and the City of San Diego, and the prolongation into the Bay of San Diego to the pierhead line of the boundary line between the City of National City and the City of Chula Vista."

2. Said Legislative grant of tide and submerged lands to the City of National City was amended by Act of the Legislature approved April 27, 1923 (Stats. 1923, p. 81) and again in 1925 (Stats. 1925, p. 112).

(III)

Portions of the tide and submerged lands owned by the City of National City, as aforesaid, were granted to or condemned by the United States, as follows:

1. A deed dated December 3, 1940, was executed by the City of National City, granting to the United States a 96.42-acre parcel of tide and submerged lands lying between the line of mean high tide and the pierhead line of the Bay of San Diego, for the purpose of maintaining piers, landings, buildings and structures to be used by the United States Navy with a right of reverter to the City of National City in the event the United States failed to use said tide and submerged lands for a period of ten successive years. Said deed was authorized by the electors of the City of National City at an election held on May 2, 1939. Said deed was recorded at the request of the United States Navy in Book 1307, page 259, Official Records of San Diego County.

2. The United States filed a condemnation proceeding against the City of National City in the United States District Court for the Southern District of California, Central Division, being Case No. 219-SD-Civil. The judgment in condemnation was entered on September 4, 1943, condemning a 5.8-acre parcel of tide and submerged lands owned by the City of National City lying in the Bay of San Diego. Said judgment is recorded in Book 1594, page 231, Official Records of San Diego County.

VIII.

City of Oakland.

The City of Oakland, a municipal corporation of the State of California, located on the eastern shore of San Francisco Bay in the County of Alameda, has made numerous grants and leases of tide and submerged lands to the United States at the instance and request of the United States; and the United States has, in the exercise of its right of eminent domain, taken by condemnation various parcels of tide and submerged lands owned by the City of Oakland, and has paid awards to the City of Oakland as compensation therefor.

(I)

The City of Oakland was incorporated and its boundaries were established in the following manner:

1. The Town of Oakland was originally incorporated by an Act of the Legislature of the State of California approved May 4, 1852 (Stats. 1852, p. 180). Thereafter the said City of Oakland was incorporated as successor to the said Town of Oakland by an Act of said Legislature approved March 25, 1854 (Stats. 1854, p. 183). Thereafter the electors of the City of Oakland, acting pursuant to Section 8 of Article XI of the Constitution of the State of California, adopted and ratified a Freeholders Charter, which was approved by said Legislature on February 14, 1889 (Stats. 1889, p. 513). Said Charter was thereafter superseded by a new Charter, approved by said Legislature on February 15, 1911 (Stats. 1911, p. 1551). Said Charter of 1911, as amended from time to time, is now in full force and effect.

2. Said City of Oakland is situated on the eastern shore of San Francisco Bay almost directly opposite the City of San Francisco. The southerly boundary of said City of Oakland, as established by said Charter of 1889 and continued in effect by said Charter of 1911, and as it now exists and has existed at all times hereinafter mentioned, follows the center line of San Antonio Estuary (which is a tidal arm of San Francisco Bay) to a point in San Francisco Bay; and the westerly boundary of said City of Oakland, established and existing as aforesaid, is located in San Francisco Bay at a distance which varies from approximately one mile to in excess of three miles westerly from the line of ordinary high tide on the easterly shore of said Bay as it existed in 1850. Said westerly boundary of the City of Oakland is coincident with the easterly boundary of the City and County of San Francisco and runs approximately north and south at a distance of approximately three thousand feet easterly of Yerba Buena Island, which is located in said Bay.

(II)

The State of California has at various times, by Acts of its Legislature, granted to the City of Oakland all tide lands and submerged lands of the State located within the boundaries of the City of Oakland, in trust for harbor purposes.

1. Among the Acts of the Legislature containing such grants are the following: Stats. 1909, p. 665, as amended by Stats. 1939, pp. 1258, 1261; Stats. 1911, p. 1254; Stats. 1911, p. 1258, as amended by Stats. 1917, p. 63; Stats. 1919, p. 1088; Stats. 1937, p. 335, and Stats. 1939, p. 1260; Stats. 1923, p. 416; Stats. 1931, p. 1346, as

amended by Stats. 1937, p. 2500; Stats. 1937, p. 115; Stats. 1937, p. 752, and Stats. 1943, p. 2189.

2. By an amendment to the 1911 Charter of the City of Oakland, which amendment was ratified by the electors of said City at a special election held for that purpose on December 21, 1926, and which was approved by the Legislature of the State of California on January 17, 1927 (Stats. 1927, p. 1978), a new Article XXV was added to said Charter, whereby a Port Department was established in the City of Oakland under the control and management of a Board of Port Commissioners and said Port Department was charged with the control and supervision of the Port of Oakland, including all water front properties and lands adjacent thereto or under water and including all tide or submerged lands granted to said City in trust by the State of California.

(III)

During or prior to the year 1936, negotiations were commenced between the United States, acting by and through its Navy Department, and the City of Oakland, looking toward the acquisition by the United States of certain lands in the Middle Harbor Area of the Port of Oakland for the creation and installation of a Naval Supply Depot. All lands involved in said negotiations and in the conveyances hereafter mentioned in this Paragraph (III) are and were tide or submerged lands located below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and some of said lands were, at the time of said negotiations and of said conveyances, submerged beneath the waters of said Bay. The United States requested the City of Oakland to convey, and pursuant to such request said City of Oakland did convey, to

the United States certain of said tide and submerged lands. In this connection defendant alleges as follows:

1. Acquisition of such lands by the United States was authorized by an Act of Congress approved June 2, 1939 (53 Stats. at L. 800), the provisions of Section 3 of which read in part as follows:

> "Sec. 3. (a) The Secretary of the Navy is hereby authorized to accept or acquire title in fee simple at a cost of not more than $300,000 to all that area of land, *including tide and submerged lands, filled and unfilled*, situate, lying and being in the middle harbor area of the City of Oakland, County of Alameda, State of California, *now owned in part by said City of Oakland and in part by the Southern Pacific Company*, and described in a so-called Map and Description of Naval Supply Depot Site, dated September 17, 1936, as Parcels A, B, D, D-1, D-2, D-3 and E, containing in all four hundred and two acres, more or less, for use as a site for a naval supply depot. . . ." (Italics added.)

2. Title to such lands was acquired by the City of Oakland from the State of California by an Act of the Legislature of the State of California approved May 1, 1911 (Stats. 1911, p. 1258), by which said State granted to said City of Oakland "all the right, title and interest of the State of California held by said state by virtue of its sovereignty in and to all tide lands and submerged lands whether filled or unfilled, which are included within that portion of the city of Oakland that lies westerly of the western line of Pine Street . . .", in trust for harbor purposes, and subject to the reservation by the State of California of the right to use without charge any harbors, wharves, docks, piers or other improvements constructed

or erected by the City of Oakland or its successors on the lands so conveyed for any vessel or railroad owned or operated by said state.

3. The 1911 Charter of the City of Oakland was amended at a municipal election held for such purpose on November 3, 1936, and such amendment was approved by the Legislature of the State of California on January 8, 1937 (Stats. 1937, p. 2631), whreby the City Council and Board of Port Commissioners were authorized and empowered to grant to the United States all or any portion of the tide and submerged lands located in the Middle Harbor area of said city including the parcel of land sought to be acquired by the United States for the said Naval Supply Depot.

4. On November 27, 1939, the United States, acting by and through the Commandant of the Twelfth Naval District, and by a letter addressed to the Mayor of the City of Oakland, advised the said Mayor that the Navy Department was desirous of having work at the site of the new Fleet Supply Base actually under way in the early part of January, 1940; that the necessary legal steps for the transfer of the property to be used would be inaugurated shortly by the Judge Advocate General, Navy Department; but that it was likely that the transfer might not be completed by the time it was planned to commence construction work. Said letter continued as follows:

> "Information is requested, therefore, as to whether or not it would be agreeable to the City of Oakland to grant a permit to the Navy Department to commence the dredging and filling on the lands which are to be transferred by the City of Oakland to the United States for the Fleet Supply Base, prior to the time the actual transfer is made."

Pursuant to said request the Board of Port Commissioners of the City of Oakland on December 4, 1939, adopted its Resolution No. 5295 granting the request of the United States Navy Department for permission to commence dredging and filling on the site of the Naval Supply Depot prior to the execution of the said conveyance. Pursuant to the permission so granted by the City of Oakland, the United States entered upon said lands and commenced dredging and filling thereon preparatory to the construction thereon of said Fleet Supply Base.

5. By a letter dated December 13, 1939, the United States, acting by and through the Commandant of the Twelfth Naval District, advised the President of the Board of Port Commissioners of the City of Oakland that the Navy Department was

> "desirous of expediting the acquisition by the United States of the property to be conveyed by the City of Oakland for a Fleet Supply Base"

and, pursuant to directions of the Secretary of the Navy, requested said President of the Board of Port Commissioners to have prepared and furnish

> "the necessary deed of conveyance and also *an abstract of the title to the property to be conveyed. . . .*"

Said letter further stated:

> "Before Government funds can be expended on lands acquired by the United States, either by purchase or gift, title to the lands must be approved by the Attorney General."

6. On May 1, 1940, an attorney in the United States Department of Justice addressed a communication to the City of Oakland, stating that under federal procedure the

Navy Department could not let any of the contracts for the development of the Naval Supply Base until the Attorney General of the United States should first find the title to the land vested in the United States. Said communication further stated that:

> "Among the requirements made by the Attorney General of the United States to be observed by the Navy Department before he will find a valid title vested in the United States is the passage and adoption of an ordinance or resolution by the Board of Port Commissioners similar in form and content to the annexed draft.
>
> "The reason for this requirement is simply to preclude any question from arising regarding the reservation made by the State of California, as set out in the California Statutes of 1911, Chapter 657, page 1258, section (b). Under this reservation the State of California has the right to use any harbors or other improvements constructed by the City of Oakland or its successors on the tidelands so conveyed, for any vessel or railroad owned or operated by the State."

City Ordinance No. 669 (C. M. S.) and Port Ordinance No. 243 had theretofore been adopted by the City Council and by the Board of Port Commissioners, each Ordinance authorizing the conveyance to the United States of the tide and submerged lands desired by the United States for said Naval Supply Depot, but subject, among other things, to existing encumbrances (including franchise rights, if any). The draft of the ordinance annexed to and referred to in the aforesaid memorandum provided that the phrase "existing encumbrances" appearing in said

prior ordinances should not include any encumbrances which might exist by virtue of the reservations made by the State of California in the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1258) by which the City of Oakland acquired title to said lands from the State of California. In compliance with the request contained in said memorandum, the City Council and the Board of Port Commissioners of the City of Oakland duly adopted ordinances substantially similar in form and content to the draft annexed to said memorandum, said ordinances being Ordinance No. 1129 C. M. S. adopted by said Council on May 16, 1940, and Port Ordinance No. 332 adopted by said Board on May 13, 1940.

7. Under date of May 16, 1940, the City of Oakland caused to be executed by its proper officers and delivered to the United States a certain deed by which said City of Oakland did

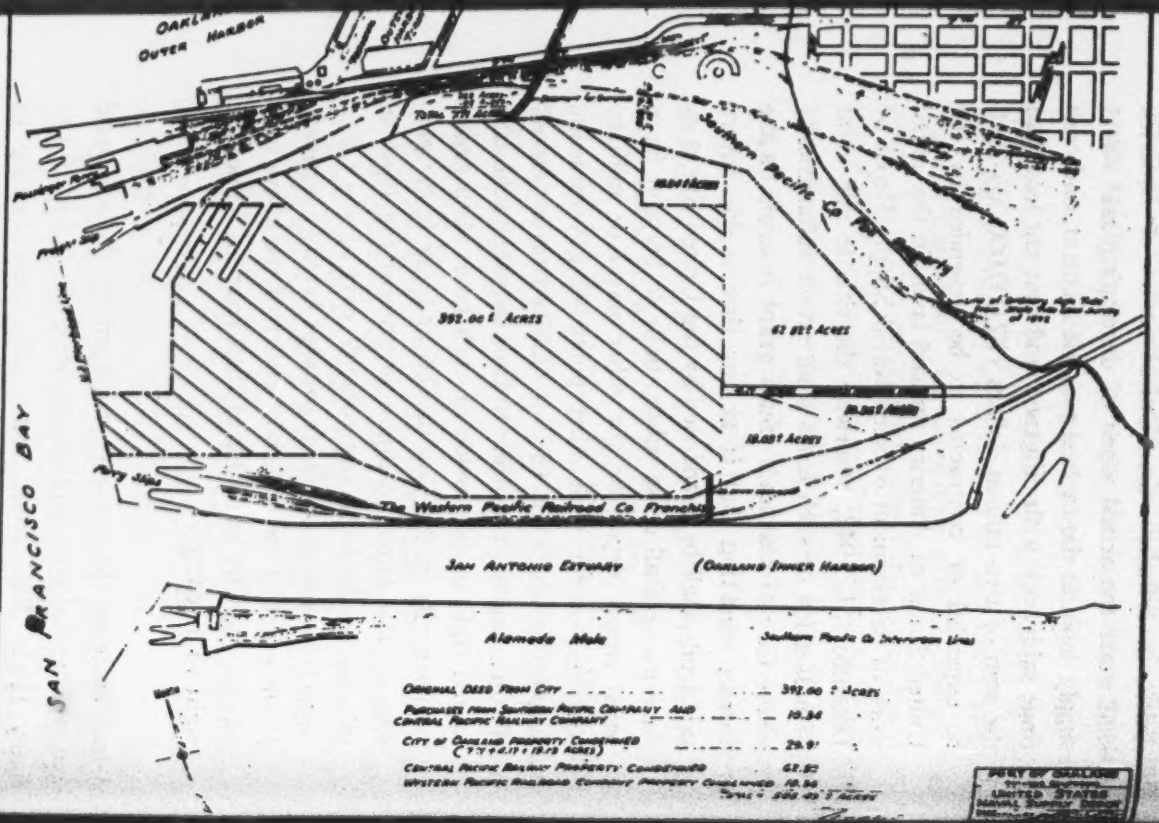
> "grant, give, convey and alien unto the United States of America, forever, all those certain tide and submerged lands situate, lying and being in the City of Oakland, County of Alameda, State of California,"

and more particularly described in said deed, containing 392 acres more or less. The habendum clause of said deed provided as follows:

> "To HAVE AND TO HOLD all and singular the said lands together with the appurtenances and privileges incident thereto unto United States of America forever as a site for a naval supply depot upon the con-

dition, nevertheless, that United States of America shall start the actual work of developing said naval supply depot at the earliest possible moment, and continue said work with diligence, and that not less than the sum of two million dollars ($2,000,000.00) shall be expended or contracted to be expended by the United States of America on said lands in the actual work of development of such Naval Supply Depot by December 31, 1942, otherwise the title to and right of possession of such lands shall revert automatically to the City of Oakland. Such grant is made on the further condition that if at any time in the future said lands shall be abandoned by the United States of America or shall cease substantially to be used for a naval supply depot, or for other naval or military purposes, or for such other public or governmental purpose to which the City of Oakland or its successors may agree from time to time hereafter, the title to and right of possession of such lands shall revert automatically to the City of Oakland. *It is the purpose of this latter condition to prevent the lying in idleness of the large and valuable part of the City's waterfront which the lands granted hereby constitute.* In the event of the breach of either of the above conditions, the City of Oakland shall have an immediate right of re-entry."

A map showing the property conveyed by the aforesaid deed as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872," is hereinafter set forth as follows:


OAKLAND
OUTER HARBOR
Southern Pacific Co Pier Property
391.66 ± ACRES
42.82 ± ACRES
18.08 ± ACRES
The Western Pacific Railroad Co Franchise
SAN FRANCISCO BAY
SAN ANTONIO ESTUARY
(OAKLAND INNER HARBOR)
Alameda Mole
Southern Pacific Co Interurban Line
ORIGINAL DEED FROM CITY ..... 391.66 ± ACRES
PURCHASED FROM SOUTHERN PACIFIC COMPANY AND CENTRAL PACIFIC RAILWAY COMPANY 19.34
CITY OF OAKLAND PROPERTY CONDEMNED (7.77 + 6.17 + 18.12 ACRES) 29.9
CENTRAL PACIFIC RAILWAY PROPERTY CONDEMNED 42.82
WESTERN PACIFIC RAILROAD COMPANY PROPERTY CONDEMNED 18.08
TOTAL = 460.40 ± ACRES
PORT OF OAKLAND
UNITED STATES
NAVAL SUPPLY DEPOT

8. In connection with the delivery of said deed the United States required the City of Oakland to execute and deliver to the United States a certificate stating, among other things, that the Board of Port Commissioners was the agency of the City of Oakland having control of and jurisdiction over all tide and submerged lands granted to said City by the State of California in trust for the promotion of commerce and navigation; that an examination of the minutes of the meetings of said Board since February 12, 1927 (the date of its creation) disclosed that said Board had taken no action affecting in any manner the title to the lands proposed to be conveyed to the United States for purposes of a Fleet Supply Base except only the ordinance authorizing conveyance of such lands to the United States for such purposes; and further:

> *"that said lands are tide and submerged lands; that they were granted to the City by the State of California* by virtue of the provisions of Statutes of 1911, Chapter 657, page 1258; that no portion of said tide or submerged lands proposed to be conveyed has been previously conveyed or encumbered in any manner by said Board of Port Commissioners, *that said City is seized of said lands in fee simple* (*see City of Long Beach v. Marshall,* 11 Cal. 2d 609*) and now possesses a good right to convey the same by virtue of the provisions of Section 232 of the Charter of said City (Statutes of 1937, page 2631) and by virtue of the provisions of Statutes of 1913, page 437 and Statutes of 1929, page 1691."

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*It is to be noted that *City of Long Beach v. Marshall, supra,* involved tide and submerged lands of the State of California, lying in the Pacific Ocean and Bay of San Pedro, granted to the City of Long Beach as alleged in Paragraph B-II of this Appendix B; and that *said grant to the City of Long Beach extends out 3 miles into the Pacific Ocean.* The Court there held the City of Long Beach to be the owner in fee simple of the said tide and submerged lands, subject to the conditions contained in said granting statute.

9. Thereupon, and pursuant to the Act of Congress approved June 2, 1939, referred to in subparagraph 1 above, the United States accepted the said deed dated May 16, 1940, from the City of Oakland and caused the same to be recorded on May 17, 1940, in Liber 3869, Page 386, of Official Records of the County of Alameda, State of California. Thereafter the United States continued to occupy and improve the lands conveyed by said deed (having theretofore commenced dredging and filling on such lands pursuant to the permission granted by the said resolution of the Board of Port Commissioners on December 4, 1939.

10. On September 12, 1940, the United States, acting by and through the Chief of Staff, Twelfth Naval District, and by a letter addressed to the Port Manager of the Board of Port Commissioners of the City of Oakland, advised said Port Manager that, in connection with the construction then under way at the Naval Supply Depot referred to above, it would be necessary to provide sewer and drainage lines from the Supply Depot property to the San Antonio Estuary and that

> "the Commandant has been directed to take this matter up with the interested parties with a view to obtaining the necessary easements for this purpose."

It was further stated in said letter that a permit had been obtained from the Western Pacific Railroad Company but that:

> "In view of the fact, however, that the permit of the Railroad Company covers the use of land occupied by them under franchise from the City of Oakland, it is requested that a similar permit be issued *by the City of Oakland covering its rights in the property,* provided there is no objection to the granting of such a permit."

There was enclosed with said letter a blueprint showing the proposed location of the sewer and drainage lines for which said easement was requested. The lands sought to be subjected to said easement were and are tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and the title to said lands had been acquired by the City of Oakland from the State of California in the same manner and upon the same conditions as the title to the land conveyed to the United States by the deed referred to in subparagraph 7 above.

Pursuant to the request of the United States contained in said letter of September 12, 1940, the City of Oakland caused to be executed by its proper officials and delivered to the United States a deed dated November 14, 1940, whereby said City of Oakland did

> "grant, give, convey and alien unto the United States of America, forever, an easement for sewer and drainage purposes *across those certain tide and submerged lands in the Middle Harbor area of the City*"

and more particularly described in said deed, consisting of a strip of land thirty feet wide and extending from the southerly boundary of the land conveyed by the deed dated May 16, 1940, referred to in subparagraph 7 above, to the San Antonio Estuary. Said strip of land is indicated in black on the map hereinabove set forth in subparagraph 7. The habendum clause of said deed provided as follows:

> "To HAVE AND TO HOLD unto the United States of America forever, upon condition, nevertheless, that in the event the title to the lands described in the deed above referred to [said deed dated May 16, 1940] shall revert to the City, all interest of the United States of America in the lands above particularly

described shall revert automatically to the City. Said grant is made on the further conditions that the use of the lands described herein shall be limited solely and exclusively to the purposes aforesaid; that any sewer or drainage lines constructed across such lands shall at all times be maintained by the United States of America in a safe manner and condition; that the United States of America shall not erect or place upon such lands any building or other structure without prior approval of the City, or otherwise unnecessarily interfere with the surface use thereof; that such easement shall be appurtenant to the lands described in the deed above referred to and that no assignment thereof shall be made without the prior written consent of the City.

"Said grant is made on the further condition that it shall not be construed as a relinquishment of the City of Oakland or the State of California of any political jurisdiction over such lands."

Thereupon the United States accepted said deed upon the conditions stated therein and proceeded to use and enjoy the easement thereby granted.

11. On June 16, 1941, the United States, acting by and through the Commandant of the Twelfth Naval District and by a letter addressed to the Mayor of the City of Oakland, advised said Mayor that the Navy Department had initiated action to provide an overpass entrance to the Naval Supply Depot from Maritime Street over Seventh Street and the Southern Pacific railroad tracks, as indicated upon a drawing enclosed with said letter. Said letter stated in part as follows:

"To expedite this matter, it would be appreciated if the City of Oakland would authorize the placing of the approach to this overpass for approximately

500 feet in Maritime Street and the crossing over Seventh Street on an extension of the center line of Maritime Street."

The lands on which it was sought to locate said overpass were and are tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and title to said lands was acquired by the City of Oakland from the State of California in the same manner and on the same conditions as the title to the land conveyed to the United States by the deed referred to in subparagraph 7 above.

Pursuant to the request of the United States contained in said letter of June 16, 1941, the City of Oakland caused to be executed by its proper officers and delivered to the United States a certain deed dated November 20, 1942, whereby said City did

"grant, give, convey and alien, unto the United States of America, forever, an easement for the purpose of constructing and maintaining a vehicular overpass, and its approaches, across those certain tide and submerged lands in the City lying between the site of the Naval Supply Depot and Maritime Street, including a portion of said street"

and more particularly described in said deed, consisting of a strip of land connecting with the northerly boundary of the land conveyed by the deed dated May 16, 1940, referred to in subparagraph 7 above. Said strip of land is indicated in black on the map hereinabove set forth in subparagraph 6. The habendum clause of said deed provided as follows:

"TO HAVE AND TO HOLD unto the United States of America forever, upon condition, nevertheless, that in

the event the title to the lands described in the deed above referred to [said deed dated May 16, 1940] shall revert to the City all interest of the United States of America in the lands above particularly described shall revert automatically to the City. Said grant is made on the further conditions that the use of the lands described herein shall be limited solely and exclusively to the purposes aforesaid; that any structure constructed upon such lands shall at all times be maintained by the United States of America in a safe manner and condition; that such easement shall be appurtenant to the lands described in the deed above referred to and that no assignment thereof shall be made without the prior written consent of the City; and that the easement granted for the construction and maintenance of said overhead walk and stairway is hereby restricted to the maintenance of an overhead structure so as not to interfere with the free passage of traffic underneath.

"The grant herein made shall include the right to construct and maintain footings for the structure hereby authorized extending a distance of twenty (20) feet on either side of the center line of the above described strip of land, but they shall be placed so that no part of them protrudes above the surface of the ground on that portion outside of the parcel of land above described.

"The grant herein made shall not be construed as a relinquishment by the City of Oakland or the State of California of any political jurisdiction over such lands."

Thereupon the United States accepted said deed granting an easement for a vehicular overpass, upon the conditions therein stated, and proceeded to construct said overpass and to use and enjoy the rights thereby granted.

(IV)

The Board of Port Commissioners of the City of Oakland has granted numerous leases to the United States, at its request, covering tide and submerged lands granted to the City of Oakland by the State of California, as aforesaid. Under each of said leases the United States, by and through the department or agency thereof named therein, has entered upon and occupied, used and enjoyed the particular portion of said lands specified and described therein and has paid to the City of Oakland, through said Board of Port Commissioners, the rentals stipulated in such lease. Among said leases covering tide and submerged lands, are the following:

1. Leases applied for and delivered to the Navy Department (each of which leases was executed on "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935"), as follows:

(a) Lease dated August 1, 1945, for the use of a portion of Ninth Avenue Pier in the City of Oakland for the period of 11 months at an annual rental of $140,000.

(b) Lease dated July 1, 1943 for the use of an unimproved water area containing 0.47 acres at the foot of Broadway in the City of Oakland, at an annual rental of $1.00, for a term beginning July 1, 1943 and ending June 30, 1944, said term being renewable at the option of the United States from year to year but not beyond six months after the termination of the war.

(c) Lease dated October 1, 1942 for the use of dry dock facilities located at the foot of Fifth Avenue in the City of Oakland containing approximately 2 acres, at an annual rental of $1.00, for a term beginning October 1, 1942 and ending September 30, 1947, renewable at the option of the

United States for successive five-year periods but not beyond September 30, 1957.

(d) Lease dated May 1, 1945 for the use of a covered area at the Ninth Avenue terminal in the City of Oakland containing approximately 15,000 square feet and of certain unimproved areas at said terminal containing approximately 3.40 acres, at an annual rental of $9,690.00, for a term beginning May 1, 1945 and ending June 30, 1946, renewable at the option of the United States from year to year but not beyond six months after the termination of the national emergency.

(e) Lease dated January 1, 1944 for the use of an improved ground area including a portion of the Ninth Avenue Pier in the City of Oakland and containing approximately 18 acres, at a monthly rental of $5,150.00, for a term commencing January 1, 1944 and ending June 30, 1944, renewable at the option of the United States from year to year but not beyond six months after the termination of the war.

(f) Lease dated August 1, 1943 for the use of approximately 54,400 square feet of the Frederick Street Wharf area in the City of Oakland, at a monthly rental of $630.00, for a term commencing August 1, 1943 and ending June 30, 1944, renewable at the option of the United States from year to year thereafter but not beyond six months after the termination of the war.

(g) Lease dated September 1, 1943 for the use of an unimproved area adjoining the Frederick Street Wharf in the City of Oakland, containing approximately 3.70 acres, at a monthly rental of $308.00, for a term commencing September 1, 1943 and ending June 30, 1944, renewable at the option of the United States from year to year

thereafter but not beyond six months after the termination of the war.

(h) Lease dated July 1, 1945 for the use of the former Municipal Garbage Wharf in the City of Oakland, containing approximately 2.30 acres, at a monthly rental of $250.00 for a term commencing July 1, 1945 and ending June 30, 1946, but renewable at the option of the United States from year to year thereafter but not beyond six months after the termination of the war.

2. Leases applied for and delivered to the War Department (each of which leases was executed on "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935"), as follows:

(a) Lease dated June 1, 1943, for the use of a parcel of reclaimed submerged lands below the line of ordinary low tide, containing 3.18 acres, in the Outer Harbor Area of the City of Oakland, for the term of one month but renewable at the option of the United States from year to year (but in no event beyond June 30, 1950), at a monthly rental of $229.17.

(b) Lease dated December 15, 1941 for the use of the Fourteenth Street Wharf and transit sheds in the City of Oakland, containing approximately 316,750 square feet, for a term commencing December 15, 1941 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947 and in no event beyond six months after the termination of the war, at a monthly rental of $10,908.53 per month from December 15, 1941 to June 30, 1943 and at a monthly rental of $10,547.77 thereafter if renewed by the United States.

(c) Lease dated March 20, 1942 for the use of certain open wharf and rear ground areas in the Outer Harbor Terminal in the City of Oakland, containing approximately 253,350 square feet, at a monthly rental of $2,427.50, for a term commencing March 20, 1942 and ending January 30, 1942, renewable at the option of the United States from year to year thereafter, but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(d) Lease dated May 1, 1942 for the use of a portion of the Seventh Street Wharf and transit shed in the City of Oakland, containing approximately 97,814 square feet, at a monthly rental of $3,257.20, for a term commencing May 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter, but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(e) Lease dated January 1, 1942 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 11.44 acres, at a monthly rental of $400.00, for a term commencing January 1, 1942 and ending June 30, 1942, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(f) Lease dated June 1, 1943 for the use of an improved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 5.47 acres, at a monthly rental of $560.00, for a term commencing June 1, 1943 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1950.

(g) Lease dated July 8, 1941 for the use of certain warehouse space in Terminal Building "B", Outer Harbor Terminal, in the City of Oakland, containing approximately 108,601 square feet, at a monthly rental of $1,629.00, for a term commencing August 1, 1941 and ending June 30, 1942, renewable at the option of the United States for an additional year ending June 30, 1943.

(h) Lease dated July 1, 1942 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 32.03 acres, at a monthly rental of $1,581.25, for a term commencing July 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947.

(i) Lease dated July 1, 1944 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 17.01 acres, at a monthly rental of $850.05, for a term commencing July 1, 1944 and ending June 30, 1945, renewable at the option of the United States from year to year thereafter but in no event beyond six months after the termination of the unlimited national emergency.

(j) Lease dated June 1, 1943 for a one-third interest in an oil pier in the Outer Harbor Terminal in the City of Oakland, containing approximately 31,500 square feet, at a monthly rental of $175.00 per month, for a term commencing June 1, 1943 and ending June 30, 1943, but renewable at the option of the United States from year to year thereafter but in no event beyond six months after the termination of the unlimited national emergency.

(k) Lease dated August 1, 1942 for the use of a ground area for storage tracks in the Middle Harbor of the City

of Oakland, containing approximately 20,400 square feet, at an annual rental of $1.00, for a term commencing August 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1950.

3. Lease dated July 1, 1944, applied for and delivered to the United States Maritime Commission for the use of a warehouse and certain ground storage space on reclaimed submerged lands at the foot of Webster Street in the City of Oakland, consisting of 106,280 square feet, for the term of one year (subject to cancellation by the lessee upon thirty days notice and by the lessor upon sixty days notice). Said lease was renewable from year to year at the option of the United States (but in no event extending beyond June 30, 1948). The monthly rental is $7380. Said lease was executed on "U. S. Standard Form No. 2 (Revised) Approved by the Secretary of the Treasury May 6, 1935".

(V)

The plaintiff United States of America has condemned parcels of tide and submerged lands, filled and unfilled, located within the boundaries of the City of Oakland and owned by the City of Oakland by virtue of said Legislative grants from the State of California, some of said condemnations being the following:

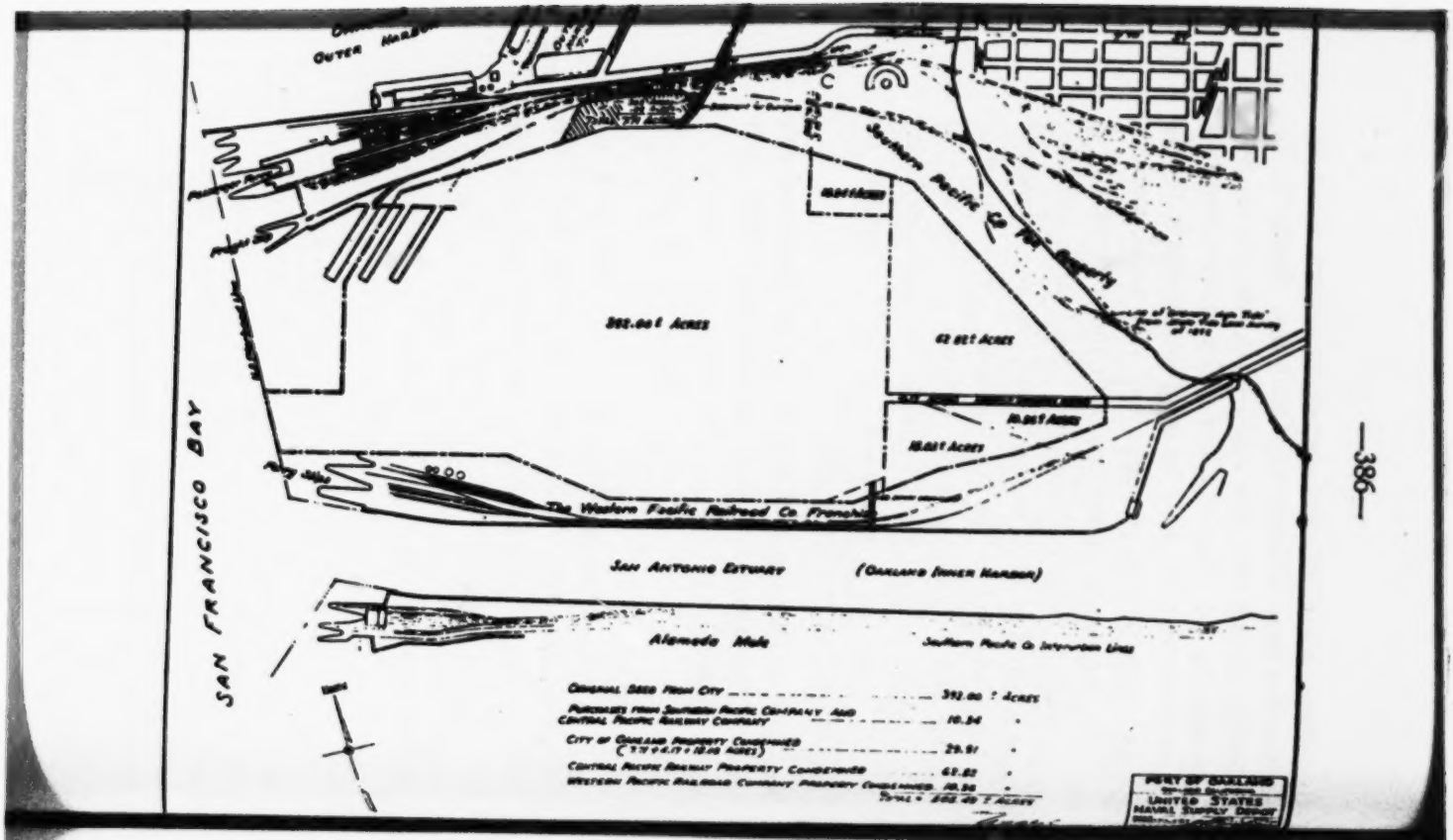
1. *United States v. 7.69 Acres of Land.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 7.69 Acres of Land, Oakland, Alameda County, California,* SOUTHERN PACIFIC COMPANY, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was com-

menced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 22378-S in the files of said court) by the filing of a Complaint in Condemnation on November 20, 1942 to take the fee simple title in and to certain lands, comprising 7.69 acres, more or less, for use in connection with the construction of a Medical Supply Warehouse. Said lands consisted of a parcel of filled and reclaimed tide and submerged lands adjacent to the Naval Supply Depot parcel of tide and submerged lands conveyed by said City of Oakland to the United States by the deed dated May 16, 1940, above mentioned. In said complaint the United States alleged that:

> "The apparent and purported owner of said above described lands is Southern Pacific Company."

A map showing said lands as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872", is hereinafter set forth as follows:


SAN FRANCISCO BAY
OUTER HARBOR
Southern Pacific Co. Pier
392.061 ACRES
43.021 ACRES
15.021 ACRES
15.021 ACRES
800
The Western Pacific Railroad Co. Franchise
SAN ANTONIO ESTUARY
(OAKLAND INNER HARBOR)
Alameda Mole
Southern Pacific Co. Interurban Lines
ORIGINAL DEED FROM CITY ..... 392.06 ? ACRES
PURCHASED FROM SOUTHERN PACIFIC COMPANY AND CENTRAL PACIFIC RAILWAY COMPANY ..... 10.34 "
CITY OF OAKLAND PROPERTY CONDEMNED (3794.17 ± 12.66 ACRES) ..... 29.91 "
CENTRAL PACIFIC RAILWAY PROPERTY CONDEMNED ..... 61.82 "
WESTERN PACIFIC RAILROAD COMPANY PROPERTY CONDEMNED ..... 10.34 "
TOTAL = 502.66 ? ACRES
PORT OF OAKLAND
UNITED STATES
NAVAL SUPPLY DEPOT

(b) Upon the filing of said complaint and on November 20, 1942, an Order for Immediate Possession was entered and made by said court and was filed in said action; and pursuant thereto the United States entered upon and took possession of said lands.

(c) On November 23, 1943, the United States filed in said action a Declaration of Taking, executed by James Forrestal, Acting Secretary of the Navy, on July 27, 1943, in which it was stated that the sum estimated as just compensation for the taking of said property was $157,880.00, which sum was deposited in the registry of the court for the use and benefit of the persons entitled thereto, and in which Declaration of Taking it was further stated that:

> *"The purported owners of the lands are the City of Oakland and the Southern Pacific Company."*

On said date of November 23, 1943, there was entered and filed in said action by the aforesaid court a Judgment on said Declaration of Taking, whereby it was ordered, adjudged and decreed that the said lands vested in the United States in fee simple upon the filing of said Declaration of Taking and the deposit in the registry of the court of said sum of $157,880.00.

(d) Thereafter and on January 3, 1944, there was filed in said action a "Stipulation For Final Judgment And Order Directing The Payment Of Money," executed under date of December 20, 1943, by the United States, the City of Oakland and the Southern Pacific Company. Said stipulation pro-

vided that the defendants City of Oakland and Southern Pacific Company consented that a final judgment might be entered in said action condemning the land described in said Declaration of Taking, awarding said defendants the sum of $157,880.00 as full, adequate and just compensation for the taking of said land, and directing that said sum be paid to a designated agent who should divide said sum between said City of Oakland and said Southern Pacific Company as therein provided. Said stipulation contained the following provision:

> "Defendants warrant that at the time of the filing of the Complaint in this action *they were, and ever since have been and now are, the owners of all the right, title and interest in and to the property* described in said Declaration of Taking, and entitled to all of the compensation for the taking and use thereof; . . ."

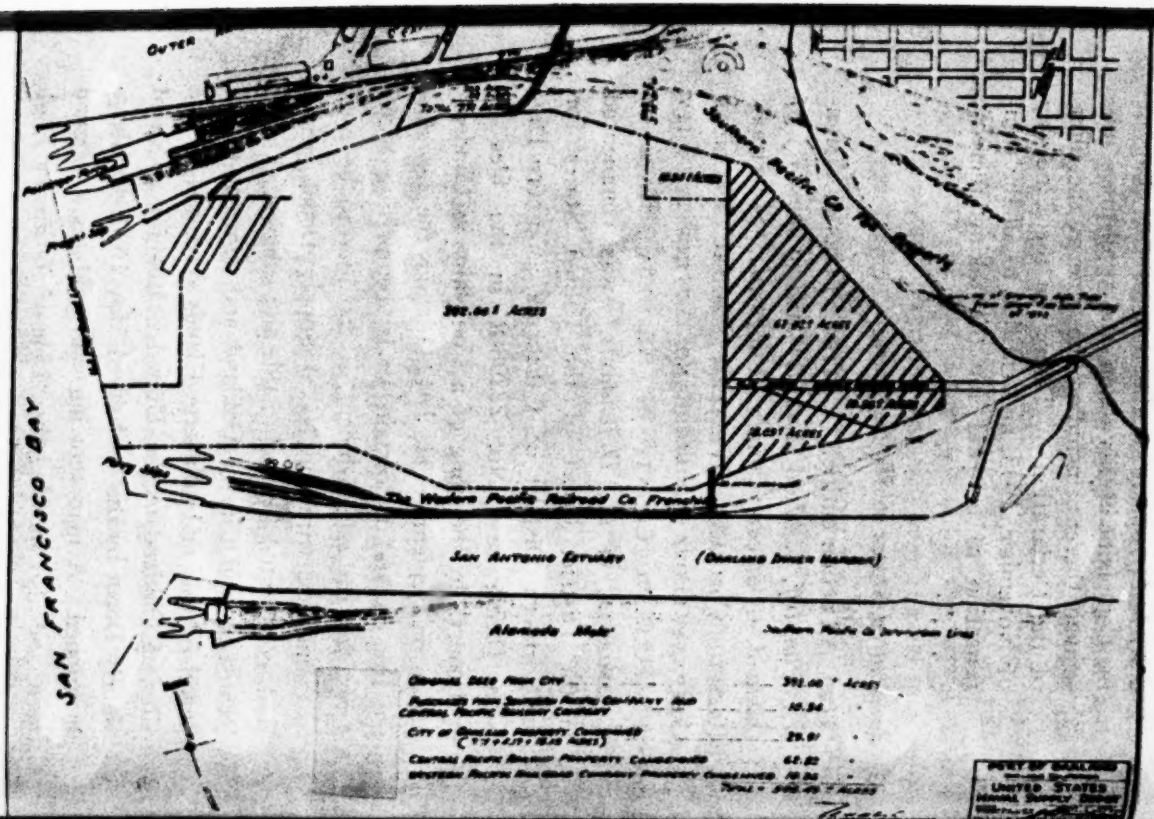
(f) On January 29, 1944, there was entered and filed in said action by the above mentioned court a "Final Judgment Of Condemnation Awarding The Sum Of $157,880.00 As Compensation For The Taking Of The Land Subject Of This Action." Paragraph IV of the findings of the court embodied in said final judgment (which findings were prepared, pursuant to the court's order, by the Special Assistant to the Attorney General representing the United States of America in said action) contained the following finding by said court:

> *"That the defendants City of Oakland, a municipal corporation, and Southern Pacific Company were the owners of the hereinafter*

described property at the time of the filing of the Complaint in this action, and at all times subsequent thereto, including the time of the filing of the Declaration of Taking on the 22nd day of November, 1943, and entitled to all the compensation to be paid for the taking thereof; . . ."

2. *United States v. 87.66 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 87.66 Acres of land in the City of Oakland, Alameda County, California,* SOUTHERN PACIFIC COMPANY, WESTERN PACIFIC RAILROAD COMPANY, PORT OF OAKLAND AUTHORITY, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 22298-R in the files of said court) by the filing of a Complaint in Condemnation on September 11, 1942, to take the fee simple title in and to certain lands, comprising 87.66 acres, for the establishment of facilities to be used in connection with the Naval Supply Depot. Said lands constituted a parcel of tide and submerged lands located in said City of Oakland and adjacent to the parcel of tide and submerged lands conveyed by the City of Oakland to the United States for a Naval Supply Depot by the deed dated May 16, 1940, above mentioned. A map showing said lands as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872", is hereinafter set forth as follows:


OUTER
SAN FRANCISCO BAY
Southern Pacific Co. Pier
The Western Pacific Railroad Co. Pier
SAN ANTONIO ESTUARY
(OAKLAND INNER HARBOR)
Alameda Mole
Southern Pacific to Interurban Line
Original Deed From City
Portion from Southern Pacific Company and Central Pacific Railway Company
City of Oakland Property Conveyed
Central Pacific Railway Property Conveyed
Western Pacific Railroad Company Property Conveyed
PORT OF OAKLAND
UNITED STATES
NAVAL SUPPLY DEPOT

In said complaint it was further alleged by the United States as follows:

> *"That the apparent and purported owners of the above described property are* as follows: Southern Pacific Company, *City of Oakland,* Western Pacific Railroad Company *and Port of Oakland Authority."*

On said date of September 11, 1942, an Order for Immediate Possession of the lands sought to be condemned was entered by said court and filed in said action; and pursuant to said order, the United States entered upon and took possession of said parcel of lands.

(b) On April 12, 1943, an Amendment and Supplement to Complaint was filed by the United States in said action in which it was alleged by the United States as follows:

> "That the above described property may be subdivided into parcels and that the apparent and purported owners of said parcels are as follows:

Parcel	Owner	Acres
K	Southern Pacific Co. and/or Central Pacific Railway Co.	62.82
H	Western Pacific Railroad Co.	7.32
G	*City of Oakland*	11.96
F	*City of Oakland*	1.39
2	Middle Harbor Road, 80 feet wide	4.17
H-A	Western Pacific Railroad	3.06
G-A	*City of Oakland*	2.61
F-A	*City of Oakland*	6.15"

(c) On April 12, 1943, the United States filed in said action a Declaration of Taking, executed by James Forrestal, Acting Secretary of the Navy, on March 10, 1943, in which it was stated that the sum of $375,751.00 was deposited into the registry of the court as the sum estimated to be just compensation for all the lands, improvements and appurtenances thereby taken, and Judgment thereon was entered on April 12, 1943, vesting the award of just compensation in the persons listed in the last subparagraph hereof. Thereafter, the United States caused said Judgment to be recorded in Liber 4346, Page 461, Official Records of Alameda County.

(d) Thereafter and in the month of December, 1945, a certain "Stipulation For Final Judgment As To Parcels G, G-A, 2, F, F-A, H and H-A" was duly executed by and between the United States, the City of Oakland and The Western Pacific Railroad Company, in which the defendant City of Oakland agreed to accept the sum of $102,371.00 as full, adequate and just compensation for the taking of Parcels G, G-A and 2, comprising 18.29 acres. Said stipulation contained the following provision:

> "*Defendants warrant that* at the time of and immediately prior to the taking of said interest by the plaintiff, *they were the owners* of said Parcels G, G-A, 2, F, F-A, H and H-A, and the only persons, firms or corporations entitled to any of the compensation for the taking of said Parcels G, G-A, 2, F, F-A, H and H-A."

3. *United States v. 72 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 72 Acres of Land, more or less, situate in the City of Oakland, County of Alameda, State of California,* THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, THE COUNTY OF ALAMEDA, THE STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 21758-S in the files of said court), by the filing of a Complaint in Condemnation on January 15, 1941 to take the fee simple title (subject to existing public roads, rights of way and public utilities) in and to certain lands, comprising 72 acres, more or less, required and necessary for military purposes of the United States. In said complaint the United States further alleged as follows:

> *"That the defendant, City of Oakland,* a municipal corporation and a political subdivision of the State of California, *is the apparent and purported owner* of said tract of land, hereinbefore described."

The United States further alleged in said complaint as follows:

> "That under and by virtue of the provisions of the Acts of the Legislature of the State of California (Stats. 1911, p. 1258, and Stats. 1917, p. 63), and Acts amendatory thereof, all of the right, title and interest of the defendant, State of California, to all or a portion of the land hereinbefore described was granted to the de-

fendant, City of Oakland, and its successors, in trust for the uses and purposes expressed in said Acts; that the defendant, State of California, may have or claim some interest in said land under and by virtue of the provisions of said Acts of the Legislature of the State of California."

Annexed to said complaint as Exhibit "A" was a map or plat of the property described in said complaint and sought to be taken, showing all the property sought to be condemned in said action as lying below the "Agreed low tide line of 1852." A copy of said map is hereinafter set forth as follows:

UNIT
WYARD
STREET
UNIT
WYARD
STREET
NORTH
INDUSTRIAL

(b) On January 15, 1941, the United States filed a Declaration of Taking, executed by Henry L. Stimson, Secretary of War, stating in part that:

> "Purported owner: City of Oakland, California; Estimated Value: $2,168,000."

(c) On January 15, 1941, a Judgment on said Declaration of Taking was entered by and filed in said court, by which it was adjudged, ordered and decreed that the title to that certain tract or parcel of land comprising approximately 72 acres, more or less, and described in said complaint and in said Declaration of Taking, in fee simple absolute, subject to existing public roads, rights of way and public utilities, vested in the United States upon the filing of said Declaration of Taking and the deposit in the registry of said court of the said sum of $2,168,000, and the right to just compensation for the property taken vested in the persons entitled thereto.

4. *United States v. 13.6203 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 13.6203 Acres of Land, more or less, situate in the County of Alameda, State of California,* THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was instituted in the District Court of the United States for the Northern District of California, Southern Division (being case No. 21939-S in the files of said court) by the filing by the United States of a Complaint in Condemnation on August 11, 1941, to condemn the full use and enjoyment for a term

of five years of approximately 13.6203 acres of land, being a portion of the "Outer Harbor and North Industrial Area of Oakland, California," and more particularly described therein. All the lands described constituted tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay. The United States further alleged in said complaint:

> "That the defendant *City of Oakland is the apparent and purported owner* of said tract of land above described."

(b) On August 10, 1941, the United States caused to be filed in said action a Declaration of Taking, executed by Henry L. Stimson, Secretary of War, stating in part that:

> "Name of Purported Owner: City of Oakland; Estimated Compensation: $27,240.00."

A Judgment on said Declaration of Taking was thereupon entered by said court.

(c) Under date of September 22, 1941, a certain

> "Stipulation For Entry Of Judgment Awarding The Sum Of $27,240.00 As Compensation For The Taking Of The Land Described In The Declaration Of Taking For A Period Of Five Years"

was made and entered into by and between the United States and the City of Oakland whereby it was stipulated that said court enter a final judgment that the sum of $27,240.00 was full, adequate and just compensation for the taking of the full use and enjoyment of said property for a period of five years com-

mencing July 1, 1941. Said stipulation further provided that

> "the defendant *City of Oakland,* a municipal corporation, represents and *warrants that* at the time of and immediately preceding the filing of the Declaration of Taking in this action *it was the owner of the property* above referred to and the only person, firm or corporation entitled to any of the compensation to be paid for said taking, . . ."

Pursuant thereto, a final Judgment was entered thereon, finding in part as follows: .

> "That the Defendant *City of Oakland,* a municipal corporation, *was the owner in fee simple* of the land described in the Complaint and Declaration of Taking filed herein, at the time of and immediately prior to the filing of the above mentioned Declaration of Taking and the one entitled to receive the compensation for said taking; . . ."

Pursuant to said Final Judgment the United States paid said sum of $27,240.00 to said City of Oakland. (d) A certain stipulation for judgment by and between the plaintiff United States of America and the defendant State of California in the aforesaid action was executed on October 6, 1941, and filed in the above mentioned court on October 9, 1941. Said stipulation contained the following provisions:

> "It is stipulated by and between the plaintiff above named and the defendant State of California that the legal effect of the condemnation action brought by the plaintiff is to compel the

City of Oakland (without its consent and against its will) to lease the property described in the complaint herein to said plaintiff for a period of five (5) years commencing July 1, 1941;

"It is further stipulated that said defendant *State of California has heretofore granted in trust to the defendant, City of Oakland,* a municipal corporation, *all of the tide and submerged lands within its corporate boundaries* and that the parcel of land described in said complaint *constitutes a part of said tide and submerged land;* that as said grantee said defendant, City of Oakland, is legally entitled to receive any money recoverable or to be paid by the condemnor for the limited use and occupation of said property sought by said condemnor and that the property rights of the defendant State of California will not be affected by such limited use and occupancy of said premises;

"It is therefore stipulated that judgment may be entered for plaintiff and against this defendant, the State of California, that the plaintiff shall have the exclusive use and control of said described property for a period of five (5) years commencing July 1, 1941, without paying any compensation to the State of California;

"It is further stipulated that no money, cost, or other judgment shall be entered herein against said defendant, State of California."

5. *United States v. Certain Land in the City of Oakland.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. Certain Land in the City of Oakland, Alameda County, California, etc.,* CITY OF OAKLAND,

COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States, in and for the Northern District of California, Southern Division (being case No. 22400-R in the files of said court) by the filing by the United States of a Complaint in Condemnation on December 10, 1942 to take the exclusive use of the land therein described for a period of one year, with the right to renew from year to year for the duration of the war emergency, as determined by the President, and three years thereafter, and with the right of the United States to remove all improvements constructed or placed thereon at the termination of such use. All the lands described in said complaint constituted filled tide and submerged lands, conveyed to said City of Oakland by the State of California. Said lands had been selected for use in connection with defense housing. It was further alleged by the United States in said complaint as follows:

"That the *apparent and purported owners* of the property are as follows:

Parcel No.	Owner
1	State of California
	* * *
4	State of California
	* * *
8	State of California
	* * *
11	*City of Oakland*
	* * *

13 *City of Oakland*

* * *

15 *City of Oakland"*

On said date of December 10, 1942, an Order for Immediate Possession was entered and made by said court and filed in said action, whereby the United States entered upon and took possession of said land.

(b) On April 12, 1943, the United States caused to be filed in said court a Declaration of Taking, reading in part as follows:

> "Those tracts of land in the City of Oakland, County of Alameda, State of California, and more particularly described as follows, the names of the purported owners thereof and the sums of money estimated by me to be just compensation for the exclusive use thereof for one year also being hereinafter set forth:"

Thereafter the fifteen parcels listed in the aforesaid Complaint were listed and described in said Schedule A, and opposite the number of each parcel said parcel was stated to be the property of the respective owners thereof as listed in said Complaint referred to in subparagraph (a) above.

A Judgment on said Declaration of Taking was entered in said court and filed in said action on April 12, 1943.

(c) On August 16, 1943, the United States and the City of Oakland stipulated, among other things, that

> "the undersigned Defendant represents and *warrants that* at the time of and immediately preced-

ing the filing of the Declaration of Taking in this action, *it was the owner in fee simple* of the above mentioned property and the only persons, firms or corporations, entitled to the compensation to be awarded for said taking, or any portion thereof."

Pursuant to said stipulation on October 19, 1943, a Final Judgment in condemnation was entered by and filed in said court awarding the sum of $2620.54 to the City of Oakland as compensation for the taking of the exclusive use of Parcels Nos. 13 and 15 for one year, said Judgment finding in part as follows:

"That the City of Oakland, a municipal corporation, is the owner of the property hereinafter described, and entitled to receive the compensation for said taking; . . ."

In accordance with said Final Judgment, the United States paid said sum of $2620.54 to said City of Oakland.

(d) The United States and the City of Oakland entered into a further stipulation as to Parcel No. 11, pursuant to which judgment was authorized condemning a leasehold therein at an annual rental of $1625.00.

Said stipulation further provided that

"the undersigned Defendant represents and *warrants that* at the time of and immediately preceding the filing of the Declaration of Taking in this action, *it was the owner in fee simple* of the above mentioned property, and the only persons, firms or corporation, entitled to the compensa-

tion to be awarded for said taking, or any portion thereof."

On October 19, 1943, a Final Judgment in condemnation was entered pursuant to said stipulation finding in part as follows:

> "That CITY OF OAKLAND, a municipal corporation, *was the owner in fee simple* of the property hereinafter described, and entitled to receive the compensation for said taking; . . ."

In accordance with said Final Judgment, the United States paid said sum of $1625.00 to said City of Oakland.

(e) On November 30, 1943, and again on November 22, 1944, and on November 16, 1945, the United States caused to be filed in said action a "Notice of Election to Extend Term Condemned" reading in part as follows:

> "Comes now the plaintiff, United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Commissioner of the Federal Public Housing Authority, gives notice that the Commissioner of the Federal Public Housing Authority has elected to extend the term condemned in the above entitled cause, for an additional year ending December 10, 1944." [Said term being extended to December 10, 1946 by said subsequent notices.]

(f) A final judgment in condemnation was, pursuant to stipulation, entered by and filed in said court in

said action on October 19, 1943, awarding the sum of $1289.23 to the State of California, as the owner of Parcels Nos. 1, 4 and 8, as compensation for the taking of the exclusive use of said parcels for the period of one year. In accordance with said judgment the United States paid said sum to the State of California as compensation for the exclusive use of said Parcels Nos. 1, 4 and 8 for the term of one year mentioned in said complaint, and a like sum for each of the years for which the term condemned has been extended, as set forth above in subparagraph (e).

IX.

Board of State Harbor Commissioners for San Francisco Harbor.

During the period from 1863 to the present time the water front of the City and County of San Francisco has been and is now held for and on behalf of defendant State of California by the Board of State Harbor Commissioners for San Francisco Harbor, which was created by an Act of the Legislature of the State of California approved April 24, 1863 (Stats. 1863, p. 406).

(I)

Among other acts and transactions of the United States whereby it has acquiesced in and recognized such title and ownership are its application for, acceptance, use and enjoyment of, and payment of rental under, many revocable lease permits and leases of portions of the tide and submerged lands and the structures and improvements thereon along the waterfront of the City and County of San Francisco. Under and by each of said lease permits said Board of State Harbor Commissioners for San Francisco Harbor, or one of its predecessor boards in office, acting for and on behalf of defendant State of California, has assigned to the United States, acting through a department or agency thereof, the occupancy and use of a portion of said lands and the structures and other improvements located thereon. The United States is required to pay a stipulated rental therefor under each of said lease permits. The United States has entered upon and occupied, used and enjoyed the particular portion of

said lands specified and described therein. Among said leases and revocable lease permits are the following:

1. Revocable lease permits applied for, assigned and delivered to plaintiff United States of America, acting by and through the Navy Department, and under which plaintiff has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, are as follows:

(i) REVOCABLE LEASE PERMIT DATED JUNE 5, 1941. For the use of Pier 14 for one year from July 1, 1941, with option to renew to June, 1946, at an annual rental of $1464.00.

(ii) REVOCABLE LEASE PERMIT DATED MAY 1, 1942. For the use of wharf and berthing space on Pier 48A at a monthly rental of $7275.90 from May 1, 1942, to June 30, 1943, with option to renew.

(iii) REVOCABLE LEASE PERMIT DATED DECEMBER 12, 1941. For the use of all of Pier 48B from December 12, 1941, to June 30, 1942, with option to renew to June 30, 1943, at a monthly rental of $7999.67, renewed to June 30, 1943.

(iv) REVOCABLE LEASE PERMIT DATED DECEMBER 12, 1941. For the use of all of Pier 50 A and B, from December 12, 1941, to June 30, 1942, with option to renew to June 30, 1943, at monthly rental of $9,019.21 for December, 1941, and $13,979.97 thereafter.

(v) REVOCABLE LEASE PERMIT DATED MARCH 26, 1941. For the use of all of Pier 54, annex and wharf from April 16, 1941, to June 30, 1941, with option to renew to June 30, 1942, at a monthly rental of $3812.51 for April, 1941, and $8377.35 thereafter; renewed to June 30, 1942.

(vi) REVOCABLE LEASE PERMIT DATED NOVEMBER 25, 1940. For the use of Pier 56 with joint use of depressed railroad tracks and elevated railway from December 1, 1940, to June 30, 1941, with option to renew to June 30, 1942, at a rental of $7499.34 for December, 1940, and a monthly rental of $7794.44 thereafter, renewed to June 30, 1942.

(vii) REVOCABLE LEASE PERMIT DATED JULY 1, 1941. For the use of Rooms 5 to 10, inclusive, on the second floor of the Ferry Building by the Cadet Selection Board of the Navy Department from July 1, 1941, to June 30, 1942, with an option to renew to June 30, 1946, at an annual rental of $3576.00.

(viii) REVOCABLE LEASE PERMIT DATED MARCH 15. 1942. For the use of mezzanine floor offices in the Ferry Building by the Naval Aviation Cadet Selective Board from March 15, 1942, to June 30, 1943, with option to renew to June, 1946, at an annual rental of $5443.00.

(ix) REVOCABLE LEASE PERMIT DATED APRIL 13, 1942. For the use of office on the second floor of the Ferry Building, Slip No. 4 and parking space at Facility 276 for official cars from April 15, 1942, to June 30, 1943, with option to renew to June, 1946, at a monthly rental of $883.00.

(x) REVOCABLE LEASE PERMIT DATED JULY 1, 1942. For the use of wharf and berth between Piers 9 and 15 from July 1, 1942, to June 30, 1943, with option to renew to June 30, 1947, at a monthly rental of $100.00.

(xi) REVOCABLE LEASE PERMIT DATED APRIL 1, 1942. For the use of space in bulkhead building at Pier 27 from April 1, 1942, to June 30, 1943, with option to renew to June 30, 1944, at an annual rental of $137.04.

(xii) REVOCABLE LEASE PERMIT DATED FEBRUARY 1, 1942. For the use of finger pier at the foot of Hyde Street from February 1, 1942, to June 30, 1943, at an annual rental of $4320.00.

(xiii) REVOCABLE LEASE PERMIT DATED JULY 3, 1942. For the use of all of Facility 156, State Refrigeration Terminal, with machinery in the plant, etc., from June 8, 1942, to June 30, 1943, at a rental for June, 1942 of $5115.56, and a monthly rental of $6672.48 thereafter, with an additional amount of $275.00 per month for twelve months from June, 1942 for wire fence and wages of employees.

(xiv) REVOCABLE LEASE PERMIT DATED JULY 1, 1942. For the use of the first floor exit from Slips 2 and 3, and part of space on first floor north of main exit of Ferry Building, from July 1, 1942, to June 30, 1943, with option to renew to June, 1946, at a monthly rental of $408.70.

(xv) REVOCABLE LEASE PERMIT DATED MAY 1, 1942. For the use of apron and road way space at Piers 31 and 33 from March 11, 1942, to June 30, 1943, with option to renew to June 30, 1950, at a monthly rental of $1191.15 per month.

2. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through the Quartermaster Corps of the United States Army, and under which plaintiff, by and through said agency, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) REVOCABLE LEASE PERMIT DATED AUGUST 29, 1941. For the use of all of Pier 20 from September 1, 1941, on a month to month basis with option to renew to June 30, 1946, at a monthly rental of $5,447.68.

(ii) REVOCABLE LEASE PERMIT DATED AUGUST 29, 1941. For the use of all of Pier 24 from September 1, 1941, on a month to month basis with option to renew to June 30, 1946, at a monthly rental of $7,029.12.

(iii) REVOCABLE LEASE PERMIT DATED JULY 31, 1941. For the use of all of Sheds A and B, space between sheds, and apron wharf of Wharf 90 from August 1, 1941, on a month to month basis at a monthly rental of $16,056.69.

(iv) REVOCABLE LEASE PERMIT DATED FEBRUARY 17, 1941. For the use of all of Pier 7 from February 17, 1941, to June 30, 1941, with an option to renew to June 1946, at a rental of $3746.49 for period from February 17, 1941, to February 28, 1941, and $34,348.24 for period from March 1, 1941, to June 30, 1941.

(v) REVOCABLE LEASE PERMIT DATED DECEMBER 24, 1940. For the use of all of Pier 17 from December 24, 1940, to June 30, 1941, with option to renew to June 30, 1946, with rental at $1820.40 from December 24, 1940 to December 31, 1940, and at a monthly rental of $7418.80 thereafter.

(iv) REVOCABLE LEASE PERMIT DATED JANUARY 19, 1942. For the use of all of Pier 37 from January 19, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rental of $6511.83 for the period from January 19, 1942, to January 31, 1942, and at a monthly rental of $15,528.22 thereafter.

(vii) REVOCABLE LEASE PERMIT DATED JANUARY 8, 1942. For the use of all of Pier 39 from January 8, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rent of $7723.14 from January 8, 1942, to January 31, 1942, and at a monthly rental of $9975.73 thereafter.

(viii) REVOCABLE LEASE PERMIT DATED JANUARY 23, 1942. For the use of all of Pier 41 from January 23, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rental of $4229.06 from January 23, 1942, to January 31, 1942, and at a monthly rental of $14,566.76 thereafter.

3. Revocable lease permits applied for and assigned and delivered United States of America, acting by and through the Secretary of Agriculture, and under which plaintiff, by and through said department, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) REVOCABLE LEASE PERMIT DATED JUNE 16, 1942. For the use of six rooms in the Ferry Building from July 1, 1942, to June 30, 1943, at a monthly rental of $178.60.

(ii) REVOCABLE LEASE PERMIT DATED JUNE 8, 1942. For the use of two rooms in State Agriculture Building on Embarcadero from July 1, 1942, to June 30, 1943, at a monthly rental of $40.00.

(iii) REVOCABLE LEASE PERMIT DATED FEBRUARY 12, 1942. For the use of Room No. 5, State Agriculture Building on Embarcadero, from February 1, 1942 for one year at an annual rental of $300.00.

(iv) REVOCABLE LEASE PERMIT DATED JUNE 1, 1942. For the use of Room No. 2, State Agriculture Building on Embarcardero, from June 1, 1942, to June 30, 1943, at an annual rent of $300.00.

(v) REVOCABLE LEASE PERMIT DATED AUGUST 11, 1942. For the use of Room 8 and part of Room 5, State Agriculture Building on Embarcardero, from July 1, 1942, to June 30, 1943, at an annual rental of $660.00; renewed by notice dated May 28, 1943, for

term beginning July 1, 1943, and ending June 30, 1944, renewed by notice dated May 20, 1944, for term beginning July 1, 1944, and ending June 30, 1945; renewed by notice dated May 31, 1945, for term beginning July 1, 1945, and ending June 30, 1946.

4. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through the United States Coast Guard, and under which plaintiff, by and through said agency, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) Revocable Lease Permit Dated May 7, 1942. For the use of space for a float between Piers 20 and 22 from March 7, 1942, to June 30, 1942, with option to renew to June 30, 1945, at a monthly rental of $25.00.

(ii) Revocable Lease Permit Dated June 13, 1941. For the use of a berth at Pier 5 and wharf space from July 1, 1941, to June 30, 1942, with option to renew to June 30, 1944, at a monthly rental of $100.00.

(iii) Revocable Lease Permit Dated February 7, 1942. For the use of four rooms, two closets and hallway in the Barge Building at Fishermen's Wharf from December 19, 1941, to June 30, 1942, with option to renew to June 30, 1943 at an annual rental of $615.60.

(iv) Revocable Lease Permit Dated July 15, 1942. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1942, to June 30, 1943, at an annual rental of $1800.00.

(v) REVOCABLE LEASE PERMIT DATED JUNE 4, 1943. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1943 to June 30, 1944, at an annual rental of $1800.00.

(vi) REVOCABLE LEASE PERMIT DATED JUNE 8, 1944. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1944, to June 30, 1945, at an annual rental of $1800.00.

5. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through various agencies and departments thereof, hereinafter named, under which plaintiff has entered upon and used the lands and structures, or parts thereof, and other improvements mentioned therein, and paid the rental therefor, as follows:

(i) Recovable lease permits to plaintiff, acting by and through the United States Corps of Engineers, for use of space on Piers 27, 1½ and 3, for which lease permits were executed and delivered on February 1, 1924, January 1, 1926, renewed January 1, 1927 and January 1, 1928 and January 1, 1929; and a lease permit dated January 1, 1930, renewed January 1, 1931 and January 1, 1932; these various permits being for different amounts of space on said facilities and for differing amounts of rent.

(ii) Revocable lease permits issued to plaintiff, acting by and through the United States Department of Agriculture, for space in the Ferry Building, these permits being executed and delivered on November 30, 1935, June 24, 1936, September 15, 1938, June 26, 1939 and June 30, 1940.

Also revocable lease permits issued to the plaintiff, by and through the same agency, for space in the State Agriculture Building on the Embarcadero, dated August 13, 1934 and July 10, 1936.

Also revocable lease permits issued to plaintiff, by and through the same agency, for use of space in Annex C of the Ferry Building, said lease permits being dated and delivered March 8, 1935, December 28, 1937, May 9, 1938, September 15, 1938, and June 17, 1940.

(iii) Revocable lease permits to plaintiff, acting by and through the United States Collector of Customs, District 28, for docking space on Section C of the seawall and for space on various piers and in the Ferry Building, varying in the different lease permits, said lease permits bearing date and having been delivered, respectively, as follows: June 25, 1915, April 7, 1916, July 1, 1924, May 12, 1931, May 2, 1932, May 8, 1933, May 10, 1934, June 17, 1936, June 17, 1937, May 24, 1939, May 11, 1940, June 2, 1941, May 21, 1942, May 25, 1943, May 17, 1944 and May 24, 1945.

(iv) Revocable lease permits to plaintiff, acting by and through the Navy Department, for use of wharf privileges at Pier 14, for which lease permits were executed and delivered on the following dates: January 18, 1924, June 23, 1924, July 1, 1925, June 30, 1926, June 30, 1928, May 6, 1929, June 14, 1935, June 5, 1936, May 24, 1937, May 25, 1938, June 8, 1939 and May 16, 1940.

Also revocable lease permits to plaintiff, acting by and through the same agency, for use of space on Pier 5, said permit being dated and delivered February 1, 1931; and for use of space on Pier 31, said

lease permit being dated and delivered February 21, 1931 and June 30, 1933.

(v) Revocable lease permit to plaintiff, acting by and through United States Commissioner of Immigration, for use of two rooms and office on Meigg's Wharf, said permit being dated and delivered July 1, 1919.

Also revocable lease permit to plaintiff, acting by and through the same agency for use of space on the north side of Pier 5, said permit being dated and delivered June 30, 1928; renewed on June 30, 1929, May 22, 1930, June 28, 1931, July 19, 1932 and June 9, 1933.

(vi) Revocable lease permit to plaintiff, acting by and through the United States Post Office Department, for use of space on the Ferry Landing at the foot of Market Street at a monthly rental of $250.00, said permit being dated and delivered March 28, 1896.

Also a revocable lease permit to plaintiff, acting by and through the same agency, for use of space in the Union Depot and Ferry House on the San Francisco waterfront at a monthly rental of $800.00, said permit being dated and delivered February 23, 1897.

(vii) Revocable lease permit to plaintiff, acting by and through the Inspector for the 18th Lighthouse District, for use of berthing space on the north side of Howard Street Wharf for a period of one year at a monthly rental of $100.00, said permit being dated and delivered May 22, 1911.

Also revocable lease permit to plaintiff, acting by and through the same agency, for use of berthing space at the Folsom Street Wharf for one year at a rental of $100.00 per month, said permit being dated and delivered June 18, 1914.

Also revocable lease permit to plaintiff, acting by and through the same agency, for use of berthing space and shed on the north side of Pier 15 for one year at a monthly rental of $100.00, said permit being dated and delivered August 5, 1915; renewed August 5, 1916; June 25, 1917, May 29, 1918, June 15, 1919, June 15, 1920, June 2, 1921, June 8, 1922, May 31, 1923, June 12, 1924, July 1, 1925, May 10, 1926, April 20, 1927, June 30, 1928 and May 10, 1929.

Also revocable lease permit to plaintiff, acting by and through the Superintendent of Lighthouses, for use of berthing space on Pier 19 for one year at a monthly rental of $100.00 per month, said permit being dated and delivered June 21, 1930; renewed May 11, 1931, May 21, 1932, May 2, 1933, and June 12, 1934.

(II)

On November 3, 1942, an action entitled "UNITED STATES OF AMERICA, Plaintiff, vs. Piers 7, 17, 37, 39 and 41, San Francisco Harbor, City and County of San Francisco, California, BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, *et al.*, Defendants," was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22355-G in the files of said court), by the United States filing a Complaint in Condemnation.

The United States sought to condemn the full use and enjoyment, for a term of years ending June 30, 1945, of certain lands situate in the City and County of San Francisco, State of California, and comprising Piers 7, 17, 37,

39 and 41 located on the waterfront of said City and County of San Francisco on the western shore of San Francisco Bay.

All the lands described in said complaint constituted tide and submerged lands, partially filled and partially unfilled, located below the line of ordinary high tide along said western shore of San Francisco Bay as the same existed in 1850; and the piers and other improvements sought to be taken and condemned by the United States in said action were at the time of the filing of said complaint constructed in part upon filled tide and submerged lands and in part upon unfilled submerged lands then lying beneath the waters of San Francisco Bay.

In said complaint the United States alleged as follows:

> "That the apparent and purported owner of said above described property is the Board of State Harbor Commissioners for San Francisco Harbor,"

and

> "That so far as is known to plaintiff, the only persons, firms or corporations having or claiming any interest in the above described property, and who are therefore joined as defendants, are the following: City and County of San Francisco and State of California."

On November 3, 1942, the court made and entered an Order for Immediate Possession whereby the United States entered upon and took possession of said lands.

On February 14, 1944 the United States and the Board of State Harbor Commissioners for San Francisco Har-

bor and the State of California stipulated in part as follows:

"That during the pendency of said action, and for the full period since the filing of said complaint and the issuance of said Order for Immediate Possession, all of the lands and property described in said complaint, and the subject of said action, have been either assigned or leased to plaintiff, United States of America, by the Board of State Harbor Commissioners for San Francisco Harbor, one of the defendants above named; that under existing leases from said Board to plaintiff, executed during the pendency of this action, plaintiff is entitled to the use and enjoyment of all of said lands and property to the end of the period for which use thereof is sought to be condemned in said action, unless sooner terminated in accordance with the provisions of said leases; and that, when fully paid, the rentals agreed to be paid by plaintiff under said assignments and leases, together with rentals heretofore paid by plaintiff to said Board thereunder, will compensate said defendants for the use by plaintiff of said lands and property for the full period of plaintiff's possession thereof since the filing of said complaint;

"That it is not now necessary or desirable for plaintiff to take or condemn any interest in or to said lands or property or any of them;

"That the Attorney General of the United States has duly and legally authorized M. Mitchell Bourquin, Special Assistant to the Attorney General of the United States, and attorney for plaintiff in this action, to stipulate and agree in behalf of the United States of America, plaintiff herein, to dismiss said action as to all of the defendants named in said complaint, and as to all of the lands and property described therein; * * *."

X.

State Board of Tide Land Commissioners Deeds in San Francisco Bay; and United States Condemnations of Lands So Granted.

(I)

Hunters Point.

1. The Board of Tide Land Commissioners was created by an Act of the Legislature of the State of California approved March 30, 1868 (Stats. 1867-8, p. 716). Pursuant to said Act said Commissioners were given the charge and disposition of all salt marsh and tide lands and lands lying under water belonging to the State of California and situate in the City and County of San Francisco. Said Act provided that the Board of Tide Land Commissioners should take possession of all such salt marsh and tide lands and lands lying under water to the point that might be established as the water front and should have the same surveyed to a point not beyond twenty-four feet of water at the lowest stage of the tide. It was further provided in said Act that after such survey and after the establishment of the water line front of San Francisco as provided in said Act, the Commissioners should sell at auction all the right, title and interest of the State in the lots included within the water line front so established.

2. Pursuant to said Act, as amended by an Act approved April 1, 1870 (Stats. 1869-70, p. 541), said Board of Tide Land Commissioners caused the salt marsh and tide lands, and lands lying under water in the City and County of San Francisco to be surveyed, the water line front of San Francisco was established, and said Commissioners sold the right, title and interest of the State of

California in and to the lots included within said water line front to various persons, firms and corporations.

3. Between June, 1869, and March, 1873, said Board of Tide Land Commissioners, acting pursuant to said Act of March 30, 1868, sold approximately 350 tide and submerged land lots around Hunters Point to approximately 23 purchasers.

The United States commenced three condemnation actions in the United States District Court in and for the Northern District of California, Southern Division, by which the United States sought to and did take and condemn substantially all the lands included within the tide and submerged land lots around Hunters Point which were sold by said Board of Tide Land Commissioners.

Said condemnation actions were the following:

(a) UNITED STATES OF AMERICA, *Plaintiff, vs. 230.5 Acres of Land in the City and County of San Francisco, State of California,* CARRIE F. REDNALL, *et al., Defendants* (No. 22147-R), in which the complaint was filed on April 4, 1942, wherein the United States alleged that each of the approximately 250 persons, firms and corporations therein named as defendants

> "claims to be the owner of a portion of the property subject of this action, or has or claims to have some interest therein,"

and in which a Declaration of Taking, executed by the Acting Secretary of the Navy, was filed on April 22, 1942 and the sum of $755,300.86 was deposited in court by the United States as the estimated just compensation for the property taken.

(b) UNITED STATES OF AMERICA, *Plaintiff, vs. 193 Acres of Land, City and County of San Francisco, State of California, and* MATILDA PRIOR ANDREWS II, *et al., Defendants* (No. 22261-G), in which the complaint was filed on July 25, 1942, wherein the United States alleged that each of the approximately 95 persons, firms and corporations therein named as defendants

> "may have or claim some interest in the above described land".

(c) UNITED STATES OF AMERICA, *Plaintiff, vs. Certain Land in the City and County of San Francisco, State of California,* WILLIAM HENRY ASH, *et al., Defendants* (No. 22416-R), in which the complaint was filed on December 24, 1942, wherein the United States alleged that each of the approximately 170 persons, firms and corporations therein named as defendants

> "has or may have or claim some interest in the property hereinafter described,"

and in which a Declaration of Taking, executed by the Acting Secretary of the Navy, was filed on April 29, 1943 and the sum of $297,028.50 was deposited in court by the United States as the estimated just compensation for the property taken.

The lands sought and taken in the action referred to in subparagraph (a) above (No. 22147-R) include part of the uplands of Hunters Point but the major portion of said lands consist of tide and submerged lands, partially filled and partially unfilled, lying northerly and southerly of Hunters Point. The lands sought and taken in the action referred to in subparagraph (b) above (No. 22261-G) consist entirely of the tide and submerged lands,

partially filled and partially unfilled, lying southerly of Hunters Point. The lands sought and taken in the action referred to in subparagraph (c) above (No. 22416-R) consist partially of uplands on Hunters Point and partially of tide and submerged lands, filled and unfilled, lying northerly of Hunters Point.

Hearings were had before said court as to various of the parcels of land included within the lands so taken in said actions and as to the compensation to be awarded for each such parcel. After each such hearing a final judgment was entered by said court, in which said court found that one or more of the defendants in said actions was or were the owner or owners of the parcel of property described in said judgment and entitled to the compensation for the taking thereof, and whereby it was ordered, adjudged and decreed by said court that the property described in said judgment was taken and condemned for the public uses of the United States, and that a designated sum of money was thereby awarded to the owner or owners of said parcel named in said judgment as compensation for the taking thereof.

Pursuant to such final judgments in said actions, the plaintiff United States paid substantial sums of money to various of the defendants named in said actions, including numerous defendants who were the owners of tide and submerged lands as the successors in interest of the State of California through the sales of such lands by the said Board of Tide Land Commissioners, as alleged in subparagraph 3 above.

(II)

Points Richmond and Molate

1. The Board of Tide Land Commissioners, created by an Act of the Legislature of the State of California approved March 30, 1868 (Stats. 1867-8, p. 716), as aforesaid, was also, by an Act approved April 1, 1870 (Stats. 1869-70, p. 541), given the charge and disposition of all the salt marsh and tide lands and lands lying under water belonging to the State of California and situate to nine feet of water at extreme low tide within five statute miles of the exterior boundaries of the City and County of San Francisco (excepting lands theretofore granted to the City of Oakland). Said Act, as amended, provided that said Commissioners should have such lands lying outside and within five miles of the boundary lines of the City and County of San Francisco surveyed to a depth of nine feet of water at the lowest stage of the tide and divided into lots, and should then sell such lots at public auction. Pursuant to said Act, as amended, said Board of Tide Land Commissioners caused to be surveyed the lands in the County of Contra Costa lying along the eastern shore of San Francisco Bay to nine feet of water at the lowest stage of the tide and lying within five miles of the easterly boundary of the City and County of San Francisco (comprising all of the tide and submerged lands to nine feet of water at the lowest stage of the tide lying along the shore of San Francisco Bay in Contra Costa County). Said Commissioners subdivided the land so surveyed into lots and, acting for and on behalf of the State of California, sold such lots at auction to various persons, firms and corporations. An Act of the Legislature of the State of California approved March 25, 1874 (Stats. 1873-4, p. 616) confirmed all sales of salt marsh and tide lands lying

partially filled and partially unfilled, lying southerly of Hunters Point. The lands sought and taken in the action referred to in subparagraph (c) above (No. 22416-R) consist partially of uplands on Hunters Point and partially of tide and submerged lands, filled and unfilled, lying northerly of Hunters Point.

Hearings were had before said court as to various of the parcels of land included within the lands so taken in said actions and as to the compensation to be awarded for each such parcel. After each such hearing a final judgment was entered by said court, in which said court found that one or more of the defendants in said actions was or were the owner or owners of the parcel of property described in said judgment and entitled to the compensation for the taking thereof, and whereby it was ordered, adjudged and decreed by said court that the property described in said judgment was taken and condemned for the public uses of the United States, and that a designated sum of money was thereby awarded to the owner or owners of said parcel named in said judgment as compensation for the taking thereof.

Pursuant to such final judgments in said actions, the plaintiff United States paid substantial sums of money to various of the defendants named in said actions, including numerous defendants who were the owners of tide and submerged lands as the successors in interest of the State of California through the sales of such lands by the said Board of Tide Land Commissioners, as alleged in subparagraph 3 above.

(II)

Points Richmond and Molate

1. The Board of Tide Land Commissioners, created by an Act of the Legislature of the State of California approved March 30, 1868 (Stats. 1867-8, p. 716), as aforesaid, was also, by an Act approved April 1, 1870 (Stats. 1869-70, p. 541), given the charge and disposition of all the salt marsh and tide lands and lands lying under water belonging to the State of California and situate to nine feet of water at extreme low tide within five statute miles of the exterior boundaries of the City and County of San Francisco (excepting lands theretofore granted to the City of Oakland). Said Act, as amended, provided that said Commissioners should have such lands lying outside and within five miles of the boundary lines of the City and County of San Francisco surveyed to a depth of nine feet of water at the lowest stage of the tide and divided into lots, and should then sell such lots at public auction. Pursuant to said Act, as amended, said Board of Tide Land Commissioners caused to be surveyed the lands in the County of Contra Costa lying along the eastern shore of San Francisco Bay to nine feet of water at the lowest stage of the tide and lying within five miles of the easterly boundary of the City and County of San Francisco (comprising all of the tide and submerged lands to nine feet of water at the lowest stage of the tide lying along the shore of San Francisco Bay in Contra Costa County). Said Commissioners subdivided the land so surveyed into lots and, acting for and on behalf of the State of California, sold such lots at auction to various persons, firms and corporations. An Act of the Legislature of the State of California approved March 25, 1874 (Stats. 1873-4, p. 616) confirmed all sales of salt marsh and tide lands lying

in the County of Contra Costa within the jurisdiction of the Board of Tide Land Commissioners as constituted under said Acts of March 30, 1868, and April 1, 1870, which had theretofore been made by said Commissioners to purchasers in good faith who had paid the full consideration therefor and to whom patents had been duly issued.

2. The County of Contra Costa is located north of the County of Alameda on the eastern shore of San Francisco Bay and San Pablo Bay and on the southerly shore of the Straits of Carquinez and Suisin Bay. The westerly boundary of said County of Contra Costa, as established by Section 3954 of the California Political Code of 1872 and as presently set forth in Section 3915 of the California Political Code, is coincident with the easterly boundary line of the City and County of San Francisco and lies in San Francisco Bay, running from the northwest point of Red Rock in a southeasterly direction to a point at the southwest corner of said Contra Costa County distant three statute miles from the natural high water mark on the eastern shore of San Francisco Bay.

3. The United States has, in the exercise of its power of eminent domain, taken and condemned parcels of tide and submerged lands, filled and unfilled, along the eastern shore of San Francisco Bay in Contra Costa County and owned by various persons, firms and corporations as successors in interest of the State of California:

(a) UNITED STATES v. 412.715 ACRES

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, vs. 412.715 Acres of Land, Contra Costa County, California,* SANTA CRUZ OIL CORPORATION, *et al., De-*

fendants" (commonly known as the "Winehaven Case"), was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22215-S in the files of said court), by the filing of a Complaint in Condemnation by the United States on June 25, 1942, for the establishment of fuel storage facilities for the United States Navy. The land described in said complaint consists in part of uplands at Molate Point on the eastern shore of San Francisco Bay and in part of tide and submerged lands and reclaimed lands near said Molate Point lying below the line of mean high water, as established by the survey of the California Board of Tide Land Commissioners in 1872. The United States further alleged in said complaint as follows:

> "That the apparent and purported owners of said above described property are: Santa Cruz Oil Corporation, North Bay Realty Development Company, Wells Fargo Bank & Union Trust Co., Blake Brothers Company, Southern Pacific Railroad, Atchison, Topeka & Santa Fe Railroad."

(ii) Pursuant to an Order For Immediate Possession entered by said court and filed in said action on June 25, 1942, the United States took possession of the lands described in said complaint and commenced construction thereon of the projected fuel storage facilities.

(iii) All tide and submerged lands and reclaimed lands included with the description contained in said complaint had been sold and conveyed by the State of California, acting by and through said Board of Tide Land Commissioners pursuant to said Act approved March 30, 1868, as amended by said Act approved April 1, 1870, to

various persons, firms and corporations, said conveyances having taken place during the years 1873 to 1875 inclusive. All the persons, firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iv) On April 19, 1942, the United States caused to be filed in said action a "Dismissal in Part" which purported to dismiss said action

> "to the extent that it embraces and affects the lands below the line of mean high water as said line was established by survey of the Board of Tide Land Commissioners, said lands being particularly designated in said survey as tide land lots 1 to 13, inclusive, as said lots are shown on that certain map entitled, 'Map No. 1, Salt Marsh and Tide Lands situate in the County of Contra Costa, State of California, 1872,' * * *."

On said date of April 19, 1943, the United States further caused to be filed in said action a Motion for Order of Dismissal in Part and For Leave to File Amended Complaint excluding from the lands taken and condemned in said action the lands below the line of mean high water as set forth above. Said motion to dismiss and to amend the complaint was made pursuant to a request of the Secretary of War addressed to the Attorney General of the United States, reading in part as follows:

> "In view of the fact that certain portions of the lands named in the above mentioned condemnation proceedings are situated below the mean high water line,

this Department intends to exercise on behalf of the United States the right to use the land in the exercise of the sovereign power of the United States. It is requested, therefore, that you take the necessary action to dismiss from the proceedings so much of the land as is situated below the mean high water line."

Said motion to dismiss and for leave to file an amended complaint was opposed by the defendants in said action and on December 13, 1943, said motion was denied by said United States District Court (such decision being reported in 53 F. Supp. 143). In so denying said motion the court held the United States could not dismiss its action against the land as of right so long as it intended to and did retain possession of the land obtained by it under the order of the court. The court further held that the navigation servitude of the Federal Government did not entitle that Government to appropriate submerged lands for the construction of improvements for the exclusive benefit of the Navy without payment therefor, saying at page 148:

"It does not follow, however, that the Government may assert its power over lands subject to this servitude to construct improvements for the exclusive use of one of its agencies; that it may appropriate land for the construction of a naval fuel supply base, exclude defendants and the general public from the use and benefit of the facility, and claim that it is acting for the benefit of the public under the navigation power."

(v) Thereafter, the trial of said action was continued with respect to all the land described in the complaint, including the portion thereof lying below the line of ordi-

nary high tide; the values of the several parcels of land were determined; and the United States paid substantial sums of money, as awarded by said court, to the owners of the respective parcels, including those owning the lands lying below the line of ordinary high tide, as successors in interest of the State of California, as alleged in subparagraph (iii) above.

(b) UNITED STATES v. 126 ACRES.

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff vs. 126 Acres of Land, more or less, in the County of Contra Costa, State of California,* THE RICHFIELD OIL CORPORATION, *et al.,* Defendants" was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22066-R in the files of said court), by the filing of a complaint in condemnation by the United States on January 19, 1942, and said lands were taken for the construction of facilities to be used for the construction of ships. The United States further alleged in said complaint

> "That the defendants, Richfield Oil Corporation, Pacific Gas & Electric Co., Basalt Rock Company, Inc., Santa Fe Land and Improvement Co., San Francisco Bridge Co., City of Richmond, California, Andrew B. McKinne, Parr Richmond Terminal Corporation, Richmond Yacht Club, State of California, Contra Costa County, Wood and Ellis, are the apparent and purported owners of the said land described herein."

(ii) On said date of January 19, 1942, the United States caused to be filed in said action a Declaration of Taking, containing the following:

"The gross sum of money ascertained by the acquiring authority to be just compensation for the aforesaid land in this proceeding and hereby taken is $125,525.00. Said just compensation is hereby allocated as follows:

Parcel	Ostensible Owner	Approximate Area	Estimated Compensation
1	Richfield Oil Corporation	82 acres	$82,000.00
2	Santa Fe Land Improvement Co.	7 acres	3,500.00
3	San Francisco Bridge Co.	24 acres	24,000.00
4	City of Richmond, California	13 acres	16,000.00
5	Wood and Ellis	.6 of an acre	25.00

and the acquiring authority estimates that said sums of money are just compensation for the respective parcels of land to which they are allocated."

On said date of January 19, 1942, a Judgment on said Declaration of Taking was entered by said court.

(iii) The lands described in said complaint and sought to be taken and condemned in said action are located on the eastern shore of San Francisco Bay in Contra Costa County, California, and consist partially of upland known as Point Richmond and partially of tide and submerged lands and reclaimed lands lying below the line of ordinary high tide along said eastern shore of San Francisco Bay, as established by the survey of the Board of Tide Land Commissioners in 1872. Such land lying below said line of ordinary high tide was conveyed to various persons, firms and corporations in or about the year 1872 by the State of California, acting through said Board

of Tide Land Commissioners, pursuant to said Act approved March 30, 1868 as amended by said Act approved April 1, 1870. All the persons firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iv) On December 30, 1942, a stipulation was made and executed in said action by and between the plaintiff United States and the defendant Richfield Oil Corporation whereby said defendant Richfield Oil Corporation waived all claims to compensation for its land (including tide and submerged land) taken in said action, in consideration of the delivery by the United States to said defendant Richfield Oil Corporation of a deed dated December 30, 1942, granting said defendant certain interests and rights.

(v) On September 20, 1943, a final judgment as to Parcel 3 in said action (owned by San Francisco Bridge Company and consisting in large part of reclaimed tide and submerged lands) was entered by said court, finding in part as follows:

> "That the defendant San Francisco Bridge Company was the owner of said Parcel No. 3 hereinafter described at the time of and immediately prior to the filing of the Declaration of Taking, as aforesaid, and is entitled to all the compensation for the taking thereof."

By said judgment the sum of $73,475.00 was awarded to the defendant San Francisco Bridge Company for the taking of said Parcel No. 3; and pursuant to said judg-

ment the United States paid said sum of $73,475.00 to said San Francisco Bridge Company.

(vi) In said action substantial sums of money were awarded by the said court to the other owners of tide and submerged lands taken and condemned by the United States in said action, and the United States paid the amounts of said awards to said respective owners.

(c) UNITED STATES v. 17.06 ACRES.

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 17.06 Acres of Land, more or less, situated in the City of Richmond, County of Contra Costa, State of California;* RICHFIELD OIL CO., *et al., Defendants*" was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22127-R in the files of said court), by the filing by the United States of a complaint in Condemnation on March 23, 1942, to take the fee simple title in and to certain lands in the City of Richmond for the construction of facilities to be used for the construction and repair of ships. The United States further alleged in said complaint as follows:

"That the apparent and purported owners of the above described parcels of land are as follows:

Parcel 1 Richfield Oil Co.

Parcel 2 M. Elliott House Richmond Investment Company, Harry W. Wernse

Parcel 3 City of Richmond, Andrew B. McKinne

Parcel 4 Santa Fe Land Improvement Co."

On said date of March 23, 1942, an Order for Immediate Possession was entered by said court, whereby the United States was authorized to take immediate possession of the lands described in said complaint. Pursuant to said order the United States entered upon and took possession of said lands.

(ii) Substantially all of the lands described in said complaint as Parcels 1, 2 and 3 constituted tide and submerged lands lying below the line of ordinary high tide as established by the survey of the Board of Tide Land Commissioners in 1872, and lying in San Francisco Bay just off the shore of Point Richmond in Contra Costa County and adjacent to the lands condemned by the United States in the action entitled *"United States v. 126 Acres"* hereinabove referred to in subparagraph (b). Such land lying below said line of ordinary high tide was conveyed to various persons, firms and corporations in or about the year 1872 by the State of California, acting by and through said Board of Tide Land Commissioners, pursuant to said Act approved March 30, 1868 as amended by said Act approved April 1, 1870 (referred to in this Paragraph (II)). All the persons, firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iii) On December 30, 1942, a stipulation was made and entered into by and between the plaintiff United States and the defendant Richfield Oil Corporation in said action (which stipulation was similar in its terms to the stipula-

tion hereinabove referred to in subparagraph (iv) of subparagraph (b) above) by which the said defendant Richfield Oil Corporation waived and relinquished any and all rights and claims to compensation for its lands (comprising tide and submerged lands) taken in said action, in consideration of the delivery by the United States of the deed and the filing by the United States of the Amended Complaint and Amendment to the Declaration of Taking in the action entitled *"United States of America v. 126 Acres of Land, etc."*, all as alleged above.

(iv) Said court awarded substantial sums of money to other defendants in said action owning parcels of tide and submerged lands thereby taken and condemned, and the United States paid the respective amounts of said awards to said respective owners.

XI.

City of Alameda.

The City of Alameda is located in Alameda County, California, on an island which is adjacent to the eastern shore of San Francisco Bay and which is separated from the City of Oakland by a tidal estuary known as San Antonio Estuary. The present island on which the City of Alameda is located was originally connnected to the mainland by a narrow neck of swampy land, through which a tidal canal was dredged in 1890-1893, thus separating the City from the eastern shore of said Bay.

(I)

The Town of Alameda was originally incorporated by an Act of the Legislature of the State of California passed on April 19, 1854 (Stats. 1854, p. 209). Said act of incorporation was amended from time to time, and on November 21, 1884, the municipality was reorganized as a city of the fifth class under the California Municipal Corporation Act of 1883. A Freeholders' Charter was adopted by the electors of the City of Alameda in 1906 and approved by the Legislature of the State of California on February 7, 1907 (Stats. 1907, p. 1051). Said Charter was amended from time to time and was superseded in 1917 by a new Freeholders' Charter adopted by the electors of the City of Alameda in 1916 and approved by the Legislature on January 25, 1917 (Stats. 1917, p. 1752).

Said Charter of 1917 declared the boundaries of the City of Alameda to follow the center line of the Tidal Canal and along the north or Brooklyn Channel, through the Oakland Harbor and the center line of San Antonio Estuary to its mouth,

> "thence along the center line of San Antonio Estuary produced westerly to its intersection with the western

boundary of Alameda County; thence southeasterly along the western boundary line of Alameda County to its intersection with the township * * *"

Said Charter of 1917 was amended from time to time but no change was made in the boundaries set forth above. Said charter was superseded by a new Freeholders' Charter duly adopted by the electors of the City of Alameda and approved by the Legislature of the State of California on May 11, 1937 (Stats. 1937, p. 2880). Said Charter of 1937 provided that the City of Alameda should have the same boundaries as those existing under the 1917 Charter. Said Charter of 1937, as amended by Stats. 1943, page 3256, is now in force and effect.

(II)

By an Act of the Legislature of the State of California approved June 11, 1913 (Stats. 1913, p. 707) there was granted to the City of Alameda

"all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries,"

in trust for harbor purposes. Said act provided that the City should not grant, convey, give or alien any of the lands so granted it by the State. Section 2 of said act provided that such conveyance was made on the condition that the City should within five years expend not less than $200,000 upon the work of improving its harbor, and that such land should revert to the State if such condition was not complied with.

At the request of the United States, the aforesaid Act was amended by an Act of the Legislature approved May 24, 1917 (Stats. 1917, p. 907) to provide that the City could

> "grant, give, convey and alien such lands or any portion thereof, forever to the United States for public purposes of the United States,"

but only if such action was authorized and approved by a vote of a majority of the electors of the City. Said act further repealed Section 2 of the aforesaid act of June 11, 1913, which had provided for the reverter of such lands to the State if the City failed to expend $200,000 on harbor improvements within five years, as alleged above.

(III)

During the year 1930 negotiations were opened between the United States and the City of Alameda looking toward the conveyance by said city to the United States of a parcel of land located within said City and containing approximately 1100 acres, for the purpose of the establishment thereon of an aviation base. Said parcel of land consisted of tide and submerged lands lying below the line of ordinary high tide in San Francisco Bay as the same existed in 1850 and conveyed to the City of Alameda by the State of California as alleged above. A large portion of said tract was unfilled submerged land at the time of said negotiations in 1930. In this connection defendant alleges as follows:

1. At an election held in the City of Alameda on November 4, 1930, a majority of the electors of said City approved the conveyance of said tract of land to the United States. Pursuant to said election and pursuant to a resolution adopted by the City Council of said City of Ala-

meda on November 18, 1930, the mayor of said City, acting for and on behalf thereof, executed a certain deed dated December 2, 1930, whereby said City conveyed to the United States the aforesaid tract of land. The United States accepted said deed pursuant to authorization contained in an Act of Congress approved July 3, 1930 (46 Stats. at L. 857) and caused the said deed to be recorded in Liber 2588, page 44, of Official Records of Alameda County, California.

2. Thereafter an error was discovered in the description of a portion of the land intended to be conveyed by the aforesaid deed of December 2, 1930. Upon discovery of said error the mayor of said City of Alameda, pursuant to a resolution of the City Council of said city, approved June 7, 1932, acting for and on behalf of said city, executed a new and corrected deed dated June 16, 1932, whereby said City of Alameda conveyed to the United States of America the tract of land authorized to be conveyed pursuant to the aforesaid election held on November 4, 1930. The United States accepted said deed dated June 16, 1932, pursuant to said Act of Congress of July 3, 1930, and caused the same to be recorded in Liber 2838, page 216, of Official Records of Alameda County, California.

3. Thereafter and in order to remove from the title of the City of Alameda to the lands adjoining those conveyed to the United States by said deed dated June 16, 1932, any cloud which might exist because of the execution, delivery and recordation of said erroneous deed of December 2, 1930, the United States, acting by and through Lewis Compton, as Acting Secretary of the Navy, executed and delivered to the City of Alameda an instrument dated April 5, 1940, in which it was recited that the

proposed grant of said lands by said city to the United States had been submitted to and approved by a majority of the voters of said city; that the deed dated December 2, 1930, had been executed, delivered and recorded; that the description in said deed was erroneous; and that a corrected deed dated June 16, 1932, had been executed, delivered and recorded. Said instrument further contained the following recitals and provisions:

"WHEREAS, the City of Alameda is of the opinion that the appearance of record of the extended lines or calls on its adjoining land as set forth in the paragraph next above, although forming no enclosure and embracing no definite area, *may constitute a cloud upon the title to the lands of said City adjacent to the lands acquired by the United States* under the corrected deed of June 16, 1932 aforesaid, and has requested that the United States execute to it an appropriate conveyance removing said cloud from the City's title; and

"WHEREAS, the land which the United States may have acquired by either or both of the aforesaid deeds was acquired and is now used for naval purposes, and is in the custody and control of the Navy Department:

"NOW, THEREFORE, the United States of America, acting by and through Lewis Compton, as Acting Secretary of the Navy, does hereby release, remise and quitclaim to the said City of Alameda, California, its successors in office, all right, title or interest whatsoever that it may appear to have of record in or to the lands within Parcel #2 as described in the aforesaid deed from the City of Alameda, California, to the United States of America, dated December 2, 1930, and recorded in Liber 2588, Page 44, official records of Alameda County, California, which it did not also

acquire by virtue of the aforesaid corrected deed of June 16, 1932, recorded in Liber 2838, Page 216, official records of Alameda County, California."

(IV)

During the year 1935 negotiations were commenced between the United States and the City of Alameda for the conveyance by said city to the United States of certain lands, comprising 929.3 acres, more or less, within the boundaries of said city for purposes of a naval base. A major portion of the lands which were the subject of such negotiations and which are hereinafter referred to constituted tide and submerged lands located below the line of ordinary high tide of San Francisco Bay as the same existed in 1850. In this connection defendant alleges as follows:

1. At an election held on January 28, 1936, a majority of the electors of said City of Alameda authorized and approved the granting by said City to the United States of said parcel of lands comprising approximately 929.3 acres for a consideration of one dollar, for use by the United States in constructing and developing a naval base, upon the condition, however, that the United States should expend or contract to spend not less than the sum of $1,000,000 in the development of said base by December 31, 1939,failing which said lands should revert back to said City.

2. Thereafter, but prior to the delivery of a deed to the United States conveying said lands, the City Council of said City of Alameda, pursuant to the request of the United States, acting by and through its Navy Department, adopted its Resolution No. 2039 dated February 4, 1936, whereby said City granted permission to the United States to commence work on the lands proposed to be con-

veyed, for the purpose of making surveys and soundings, prior to actual transfer of the title and possession.

3. At the time of the aforesaid election on January 28, 1936, a portion of the land proposed to be conveyed to the United States by the City of Alameda was subject to a lease made by said City as lessor on September 20, 1927, to Chadwick Thompson and Virgil G. Skinner as lessees, the lessees' interest therein having thereafter been assigned with the consent of said City to Alameda Airport, Inc., and said Alameda Airport, Inc. having subleased such land to Pan American Airways, Inc. On May 17, 1937, the United States, acting by and through the District Public Works Officer of the Twelfth Naval District, addressed a communication to the City Attorney of the City of Alameda stating that a cancellation of said lease by said city would be likely to result in litigation, by reason of which

> "the City could not give the Navy Department an unencumbered title to the property until the court proceedings were completed."

It was further stated in said communication that:

> "This method of acquiring the site, if litigation were involved, would be unsatisfactory for the Navy Department, the City and the lessee."

The following proposal was then advanced in said communication for consideration by said City Attorney:

> "As an alternative the lease might be cancelled by mutual agreement between the City and the lessee, the lessee to retain title to all buildings and other such structures erected by him but agreeing to remove such as he desires when directed to do so by the Navy Department; the City would then give the Navy Department an unencumbered title to the land; the Navy Department would give a permit, say to July 1, 1938,

for the Pan American Airways Company to operate its trans-Pacific planes as is now done; the Navy, at the expiration of this permit would direct the lessee to remove the buildings on the site; the Pan-American Airways Company and the lessee would make their own arrangement as to the continued use of the buildings during the life of the permit, possibly that the Pan American Airways Company would continue to pay to the lessee the same rent as at present."

It was further pointed out in said communication that the advantage of the proposed solution to the Navy Department would be that:

"An unencumbered title would be acquired for the property, thus permitting the Navy Department to start at once (instead of at some indefinite time in the future) the development of the Air Station."

4. Pursuant to the aforesaid election of January 28, 1936, and further pursuant to Ordinances Nos. 616 and 617 adopted by the City Council of the City of Alameda, said city caused to be executed by its proper officers and delivered to the United States a certain deed dated November 26, 1937, whereby said City did convey the title to the aforesaid parcel of approximately 929.3 acres of land to the United States for the purposes of a naval base, subject, however to the conditions alleged in subparagraph 1 above with respect to development of said base by the United States. The United States thereupon accepted said deed, upon the aforesaid conditions, and paid to the City of Alameda the consideration of one dollar, pursuant to authorization contained in an Act of Congress approved June 24, 1936 (49 Stat. at L. 1901).

Said Act of Congress provided in part as follows:

"That the Secretary of the Navy be, and he is hereby, authorized to purchase in behalf of the United States as a site for a naval air station, at a cost not to exceed $1, and to accept the title in fee simple to all that certain piece or parcel of land situate, lying and being south of the Alameda Mole, in the city of Alameda, county of Alameda, State of California, and more particularly described as follows: [description] *Provided, however,* that at least $1,000,000 be expended for or contracted to be expended in the actual work of development of said naval air base by December 31, 1939, otherwise said lands shall automatically revert back to said city of Alameda."

Upon accepting said deed, the United States caused the same to be recorded on November 26, 1937, in Liber 3583, Page 1, of Official Records of Alameda County, California.

C.

Decisions and Rulings by Branches and Departments of the United States That California Owns the Tide and Submerged Lands.

The judicial, legislative and executive branches of the government of the United States, the Attorney General of the United States, the Secretary of the Interior and the Department thereof, the General Land Office, the War Department and Chief of Engineer and subordinates thereof, the Navy Department, and other agencies of the United States, have over a period of many decades, constantly and in innumerable instances, declared, ruled and decided that the State of California and its grantees are the owners of and hold the title to all the tide and submerged lands within the limits and boundaries of the State of California (subject to grants to and condemnations by the United States of portions thereof). Some only of these declarations, rulings and decisions are the following:

I.

By Judicial Branch.

This Honorable Court and the lower Federal Courts have declared and determined that the State of California and its grantees are the owners respectively of the tide and submerged lands within the boundaries of said State, as heretofore alleged in the First Affirmative Defense, Paragraph XVI and XVII hereof, with respect to the basis or source of the State's title. Said decisions are likewise recognitions and acquiescences by a coordinate branch of the United States government in the title of the State

of California and its grantees, and a few instances thereof are set forth as follows:

1. The Federal Courts have declared that the 144-acre tract of submerged lands attempted to be described in paragraph VI of the complaint herein extending ¾ of a mile into the Pacific Ocean and Santa Barbara Channel thereof, is owned by the State of California and its lessee, Pacific Western Oil Corporation.

Spaulding v. United States (D. C. S. D. Cal. 1937), 17 Fed. Supp. 966 involved State of California Tide and Submerged Lands Lease No. 92 held by Pacific Western Oil Corporation. *Spaulding v. United States* (D. C. S. D. Cal.), 17 Fed. Supp. 957 involved State of California Tide and Submerged Land Lease No. 93, in which Pacific Western Oil Corporation held an interest, and which lease extends ¾ of a mile into the ocean and covers an area of submerged lands approximately the same size as and adjoins said Lease No. 92. In referring to the entire area of tide and submerged lands covered by said Leases Nos. 92 and 93, and describing them generically as "tidelands," the court there said that:

> *"The tidelands of California are held by the State in trust for the people for the purpose of navigation, commerce and fishery.* Constitution of California, Art. 15 §2; *Borax Consolidated v. Los Angeles* (1935), 296 U. S. 10, 56 S. Ct. 23, 80 L. Ed. 9; *Illinois Central Railroad Co. v. Illinois* (1892), 146 U. S. 387, 452, 13 S. Ct. 110, 36 L. Ed. 1018; *Forestier v. Johnson* (1912), 164 Cal. 24, 127 P. 156; *City of Oakland v. Buteau* (1934), 219 Cal. 745, 29 P. (2d) 177; *Boone v. Kingsbury* (1928), 206 Cal. 148, 273 P. 797.

> *"While the state is prohibited from alienating the tidelands* (Constitution of California, art. 15, §3), *general leasing statutes allowing their leasing exist.* Act. 6345, 2 Deering's General Laws of California (1931) p. 3468; Act 6351, 2 Deering's General Laws (1931) p. 3473; Act 8418, Deering's General Laws (1931) p. 4700. *The control of some of the state's tidelands has also been transferred from the state to several of its largest cities and counties, through legislative enactments."*

These decisions were affirmed by the Ninth Circuit Court of Appeals: 97 F. (2d) 697; and 97 F. (2d) 701; *certiorari* was denied by this Honorable Court: 305 U. S. 644.

2. The Federal Courts have declared the State of California to be the owner of the submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof within the immediate vicinity of said State Leases Nos. 92 and 93. In the case of *Bankline Oil Company v. Commissioner*, 90 F. (2d) 899, appeal to this court 303 U. S. 362, State Tide and Submerged Land Lease No. 89 in the Elwood oil field was involved. Said lease extends approximately ¾ of a mile into the Pacific Ocean and Santa Barbara Channel thereof. The Circuit Court of Appeals there stated (90 F. 2d at 900) that:

> *"The State of California holds the tide lands within its boundaries in its sovereign capacity in trust 'for the people of the State* that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein free from interference of private parties.' *Boone v. Kingsbury*, 206 U. S. 148, 183, 273 P. 797, 812. See *Constitution of California*, Article 15; *Illinois Central Rail-*

road Company v. Illinois, 146 U. S. 387; *Borax Consolidated v. Los Angeles,* 296 U. S. 10; *Heckman v. Swett,* 99 Cal. 303, 33 P. 1099; *Oakland v. Buteau,* 219 Cal. 745, 29 P. (2d) 177. *The petitioner's lease was granted pursuant to the Statutes of California,* 1921, c. 303, p. 404, entitled, 'An act to reserve all minerals in state lands,' etc. *By this act, the state has reserved the mineral deposits in all lands belonging to the state.* . . .

* * * * * * * *

"One of the purposes of the aforesaid act . . . is to give to the citizens of the state of California 'an opportunity to intercept the large volumes of oil gravitating seaward to inextricable depths, and to reduce to useful purposes *oil, gas and mineral deposits reposing beneath the ocean's bed.*' Boone v. Kingsbury, 206 Cal. 148, 181, 273, p. 797, 811, *supra.* It was enacted in pursuance of the policy of the state of California 'with respect to the extraction of its minerals *from state lands.*' Boone v. Kingsbury, 206 Cal. 148, at page 185, 273 P. 797, 813, *supra.* The legislation was upheld by the California Supreme Court against the claim that it violated the implied trust under which *the state holds its tide lands* because the rights granted by the leases do not interfere with such trust, . . .' Boone v. Kingsbury, 206 Cal. 148, at page 183, 273 P. 797, 813, *supra.*"

3. In *Boone v. Kingsbury* (1928) 206 Cal. 148; 273 Pac. 797, this Honorable Court denied petition for certiorari, 280 U. S. 517, after decision of the Supreme Court of the State of California. That case involved seven applications for oil and gas prospecting permits covering State of California tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel thereof at Sea

Cliff, County of Ventura. The Legislature of the State of California in 1921 enacted a statute (Stats. 1921, p. 404, Ch. 303) providing for the execution of prospecting permits and leases from the State of California to citizens of the State upon tide and submerged lands within the boundaries of the State. Said seven applications for prospecting permits were filed with the State Surveyor General pursuant to said Act. The Surveyor General having refused to grant the permits on the contention that the said Act of the Legislature was invalid, a mandamus proceeding was brought in the Supreme Court entitled *Boone v. Kingsbury, supra.* The Supreme Court of California determined that said Act was valid, that the State of California was the owner of the tide and submerged lands, and had power to provide for leasing its tide and submerged lands in the Pacific Ocean and elsewhere within its boundaries for purposes of exploring for and extracting oil and gas therefrom. The Court there held that the State of California is the owner of the tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof. In so doing, said Court repeated the decisions of this Honorable Court, holding the States to be the owners, respectively, of the tide and submerged lands within their limits and boundaries. Quoting at length from one of said decisions, *Shively v. Bowlby,* 152 U. S. 1, the Court there said in part that:

> "Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State —a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation

and fishery—and cannot be retained or granted out to individuals by the United States. Such title being in the State, the lands are subject to State regulation and control, * * *."

4. This Honorable Court has declared or decided in not less than eight decisions extending over a period from 1867 to 1935, that the State of California is the owner of all tide and submerged lands and of the soils under all tidewaters within the borders, limits or boundaries of the State of California. Reference is hereby made to Paragraph XVI of the First Affirmative Defense hereof wherein the said declarations or holdings of this Court in those eight decisions are set forth.

5. The United States District Court for the Southern District of California, in *Dean v. City of San Diego* (1921) 275 F. 228, 231, stated that:

". . . By repeated declarations of our Supreme Court, with respect to lands acquired by the United States and out of which sovereign States of the Union were thereafter created and set up, it has been definitely decided that *lands lying beneath the navigable waters of the sea* or any of its arms *became the property of such sovereign state adjacent thereto,* subject only to the rights surrendered to the general government through the Federal Constitution. Pollard v. Hagan, 3 How. 212, 11 L. Ed. 565; Weber v. Board of Harbor Commissioners, 18 Wall. 57, 65, 21 L. Ed. 798; City and County of San Francisco v. Le Roy, 138 U. S. 656, 670, 11 Sup. Ct. 364, 34 L. Ed. 1096. In that wise, the State of California became possessed of lands below ordinary high tide in San Diego Bay."

II.

By the Legislative Branch.

(A) Congress has never enacted legislation or made provision in any manner whatsoever for the sale, homesteading, donation or other conveyance whatever, of any tide or submerged lands, either along the coasts of the various states of the Union, or in any of the bays, harbors, lakes or rivers thereof. Congress has consistently refrained from attempting to dispose, in any manner whatever, of the tide and submerged lands, either on the coasts, or in bays, harbors, lakes or rivers. This uniform policy on the part of Congress has often been called to the attention of the Congress and the public by the courts and the various departments of the United States, including the Secretary of Interior. Despite such knowledge on the part of Congress and after the matter had been pointed out by the court and by the Secretary of the Interior, Congress has enacted amendments to the general land laws and the Mineral Leasing Act, but has never changed its policy of refraining from providing for disposal of tide and submerged lands. A few instances in which this uniform policy of Congress of refraining from attempting to dispose of tide and submerged lands has been publicly announced, are the following:

1. In *Barney v. Keokuk,* 94 U. S. 324-328, this court stated that:

"The United States has wisely abstained from extending (if it could extend) its surveys and grounds beyond the limits of high water."

2. In *Mann v. Tacoma Land Co.* (1894), 153 U. S. 273-284:

"It is settled that the general legislation of Congress in respect to public lands does not extend to tide lands."

3. In *Shively v. Bowlby* (1894), 152 U. S. 1, 48, it is stated that:

"But Congress has never undertaken by general laws to dispose of such [tide or submerged] lands * * * The Congress of the United States, in disposing of the public lands has constantly acted upon the theory that * * * the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; * * *"

4. The Commissioner of the General Land Office and Secretary of the Interior have likewise ruled, in denying applications of W. G. Clark, *et al.*, under dates of September 18, 1934, and February 7, 1935, set forth in Paragraph C-IV-4 of this Second Affirmative Defense.

(B) The Congress of the United States has enacted legislation asserting and declaring that the State of California and its grantees are the owners of the tide and submerged lands within the limits of said State. Some of these legislative enactments are heretofore alleged in this Second Affirmative Defense, in connection with grants to the United States. Said legislative enactments are likewise recognitions and acquiescences on the part of Congress of the title of the State in and to the tide and sub-

merged lands, and a few of these instances are set forth as showing such recognitions and acquiescences:

1. By Act approved July 25, 1912, Congress provided for an exchange between the United States and the City of Los Angeles of two 9.75-acre tracts of submerged lands lying in the Pacific Ocean and Bay of San Pedro. The details of said exchange are set forth in Paragraph B-X of this Second Affirmative Defense. The Congress there provided in said Act approved July 25, 1912:

> "That the Secretary of War be and he is hereby authorized to grant to the City of Los Angeles, California, all of the right, title and interest of the United States in and to that portion of *the submerged lands around the military reservation on Deadman's Island acquired under act of the Legislature of the State of California* approved March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor between Station 15 as established by the Secretary of War (July 29, 1908) and Station 12 as established May 31, 1911, containing an area of 9.75 acres more or less, in exchange for the grant by said City to the United States, for use for public purposes, of an approximately *equal area of submerged lands of said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of 950.53 feet on the West Channel, and lying adjacent and southerly of the submerged lands in front of the San Pedro military reservation."

2. An Act of Congress approved March 3, 1925 (43 Stats. p. 1189) made an appropriation for the improve-

ment of the Los Angeles and Long Beach Harbors, California, "in accordance with the reports submitted in House Document numbered 349, sixty-eighth Congress, First Session, *and subject to the conditions set forth in said document;* * * *." One of the conditions set forth in House Document 349 required the City of Los Angeles to grant to the United States a 61.98-acre parcel of said City's submerged lands in the Pacific Ocean and Bay of San Pedro in exchange for a portion of the United States Military Reservation at Deadman's Island, said report requiring in this connection that the City of Los Angeles

> "(a) *Cede to the United States,* in lieu of that portion of the Military Reservation at Reservation Point which will be required for widening the main entrance channel *an equivalent area to the east, adjoining the present Federal holdings.*"

3. Congress passed an Act of June 2, 1939 (53 Stats. 800) declaring the title of tide and submerged lands within the boundaries of the City of Oakland, California, to be owned by the City of Oakland, which City is the grantee of the State of California of said tide and submerged lands, as is more particularly alleged in Paragraph B-VIII of this Second Affirmative Defense. In said Act Congress declared that:

> "Sec. 3.
>
> (a) The Secretary of the Navy is hereby authorized to accept or acquire title in fee simple at a cost of not more than $300,000 to all *that area of land, including title and submerged lands, filled and un-*

filled, situate, lying and being in the middle harbor area of the City of Oakland, County of Alameda, State of California, *now owned in part by said City of Oakland* and in part by the Southern Pacific Company, and described in a so-called Map and Description of Naval Supply Depot Site, dated September 17, 1936, as Parcels A, B, D, D-1, D-2, D-3 and E, containing in all *four hundred and two acres,* more or less, for use as a site for a naval supply depot. . . ."

4. By joint resolution of Congress approved July 9, 1937 (50 Stat. 488), Congress established a Commission to be known as the United States Golden Gate International Exposition Commission, and authorized the appropriation of $1,500,000 in connection with the San Francisco 1939 World's Fair. Said joint resolution recognized and declared the ownership of what is now known as "Treasure Island," an artifically filled in portion of the Bay of San Francisco, as being municipally owned, by declaring as follows:

"WHEREAS, a site for the exposition *an island of 400 acres, municipally owned* and located in the center of San Francisco Bay, is now nearing completion, and the San Francisco Bay Exposition, Incorporated, will expend not less than $24,500,000 on its improvement, said site upon the close of the exposition to become a municipal airport serving the entire metropolitan San Francisco Bay district and forming an adjunct of vast importance to national defense; * * *"

III.

By the Attorney General of the United States.

The Attorney General of the United States is required by Acts of Congress to render his opinion on the title to all lands acquired or received by the United States prior to construction of any improvements thereon. In pursuance of his said duty, the Attorney General of the United States has on occasions too numerous to mention rendered his opinion over a period of many decades that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the limits, borders and boundaries of the State, in connection with grants and leases to the United States of portions of tide and submerged lands within the State of California.

By Act of Congress of September 11, 1841 (5 Stats. 468), now embodied in Revised Statutes Section 355, and in 34 U. S. C. A. Section 520, as amended by Act of June 28, 1930, and by Act of October 9, 1940, and also embodied in 40 U. S. C. A. Section 255 and 50 U. S. C. A. Section 175, it is provided that:

> "No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon * * * public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title * * *. The District Attorneys of the United States, upon the application of the Attorney General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. * * *."

Regulations have been issued by the Department of Justice and the Attorney General "For The Preparation

Of Title Evidence In Land Acquisitions By The United States" directing the procedure of the attorneys of the Department of Justice in reviewing land titles in acquisitions by the United States. Section 1 of this Regulation states in part that:

> "It is considered to be the duty of the heads of the acquiring agencies to furnish the Attorney General any necessary evidence of title of land to be acquired by direct purchase, exchange or donation, the expense of procuring the same to be paid out of the appropriations made for the respective departments, unless by contract or by statute vendors are required to furnish such evidence."

1. The Attorney General on June 30, 1927, rendered his written opinion to the Secretary of War finding that title to a 61.98-acre parcel of submerged lands in the Pacific Ocean and Bay of San Pedro was owned by the City of Los Angeles, stating in part that:

> "I have the honor to report that I have examined the abstract of title to 61.98 acres of land in the City of Los Angeles, County of Los Angeles, which are proposed to be purchased by the Government, under the provisions of the River and Harbor Act of March 3, 1925, 68th Congress, Docket #349, the total consideration being $1.00.
>
> * * * * * * * *
>
> "The abstract contains 29 pages and was certified to by J. T. Saunders, Official Searcher of the City of Los Angeles, with certificate attached, dated February 4, 1927, which certificate is satisfactory. A map of the land made by the engineers of the War Department accompanies the abstract.

"From an examination of the abstract, *I find the title to said land in the City of Los Angeles.* When the undated deed accompanying the abstract has been signed by the City of Los Angeles, acknowledged according to the laws of the State of California, and placed of record, and another certificate has been attached to the abstract showing the recording of said deed, the payment of all taxes, the examination of the record brought down to a date subsequent to the recording of the deed, that nothing has been done to affect the title to this land since the date of making the present certificate, and the abstract shall have been returned to me, I will then approve the title.

"The abstract and related papers are enclosed herewith.

Respectfully,

William D. Mitchell,
Attorney General."

2. On October 16, 1915, the United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles and advised that the Attorney General of the United States had rendered his opinion that the City of Los Angeles was the owner of a 9.75-acre parcel of submerged lands lying in the Pacific Ocean and Bay of San Pedro, and stated that:

> "I have to advise that *the Attorney General has passed the title of the City of Los Angeles to the 9.75 acres* of land in the outer harbor at Los Angeles, California, which the City of Los Angeles had been heretofore authorized to transfer to the United States Government in exchange for a like amount of land lying on the westerly side of the entrance channel to the inner harbor of Los Angeles, *and has found the title good.*

"Pursuant to his instructions, a deed from the City of Los Angeles to the United States has been placed of record and I understand that the actual exchange of the property took place sometime ago."

3. In the year 1934, the Attorney General of the United States and the United States Attorney in Los Angeles, California, rendered an opinion that the City of Newport Beach was the owner of the submerged lands lying in the Pacific Ocean in front of the entrance to Newport Beach, in connection with five warranty deeds from said City to the United States, conveying to the United States approximately twelve acres of submerged lands lying in the Pacific Ocean. In the correspondence between the City of Newport Beach and the United States Attorney in Los Angeles, leading up to the said opinion of the Attorney General of the United States that the City of Newport Beach was the owner of said submerged lands, a letter of May 2, 1934 states that:

"Mr. Powell [Deputy United States Attorney in Los Angeles] recommended in place of a quit-claim deed that the city give a warranty deed to all the right, title and interest to the east and west jetties, the warranty deed to include the right of extending the jetty. He thought that this method of conveyance would be more acceptable as the *State of California has conveyed to the City of Newport Beach certain rights to tidelands and submerged lands along the Ocean Front and from the City limits of Newport Beach extending three miles from the shore line.*"

4. On February 28, 1902, the United States Attorney in Los Angeles rendered his opinion to the United States District Engineer Office at Los Angeles stating that title to all accretions which had formed upon tide and sub-

merged lands in the Pacific Ocean and Bay of San Pedro easterly of the East Jetty Breakwater were owned by the State of California and not by the United States.

5. On April 9, 1853, the Attorney General of the United States rendered his opinion to the Secretary of the Navy finding that the State of California was the owner of and held title to all the tide and submerged lands in the Bay of San Francisco surrounding Mare Island, and there stated in part as follows:

> "Following up the suggestions and inquiry made by Mr. Cooley, I am satisfied that the *State of California may set up and probably maintain title as against the United States* to so much of Mare Island as is subject to overflow by water, whether tidal or otherwise, *that is, at least, to all below high water mark.*
>
> "In the first place, the Supreme Court has decided in the case of Pollard v. Hagan, 3 Howard 212, that the *shores of navigable waters,* and the *soils under them* were not granted by the Constitution to the United States, but were reserved to the States respectively, and the new States have the same right, sovereignty and jurisdiction over this subject as the original States. This decision has been recognized and more than once reaffirmed by the Supreme Court. See Goodrich v. Kibbe, 9 Howard 471-477, and Doe v. Beebe, *et al.*, 13 Howard 25. It is immaterial, under these decisions, whether the general sovereignty of the United States, and their right of domain, come by treaty with a foreign power or otherwise. In all cases, on the admission of any State into the Union the land of the shores below high water mark, passes to, and vests in that State by virtue of the Constitution.
>
> "In the second place, by act of Congress passed the 20th day of September, 1850, all the swamp and

other overflow lands in the State of Arkansas, made thereby unfit for cultivation are granted to said State, and the provisions of the Act are extended to and its benefits conferred upon each of the several States of the Union in which such swamp and other overflowed lands may be situated. The State of California had already, by Act of September 9, 1850, been admitted into the Union and is, of course, entitled to all uncultivated overflowed lands within its limits as against the United States. It seems to me, that *on one or both of these grounds,* the State of California *may lay claim to all that of Mare Island* which is now below high water mark, and which is just as necessary as the upland, Nay, more necessary for the purposes of a Navy Yard. It will not avail anything for the United States to acquire the upland, unless it may construct wharves and docks, which of course, must be situated on this very overflowed or tide water shore land. Nay, how can the United States enjoy the use of Mare Island as a Navy Depot *while its entire shore belongs to California* who's rights of property may shut up the Island against access of ships as effectually as if it were surrounded by a wall of granite . . .

"I recommend that therefore, as indespensible prerequisites to any lawful expenditures of public money on Mare Island:

* * * * * * * *

"*Secondly,* that the State of California be invited to relinquish to the United States whatever claim, if any, she may have, to the shores or overflowed lands of Mare Island."

(8 Op. Atty. Gen. 422.)

6. The Attorney General of the United States in the year 1889 rendered his opinion that the State of California had validly conveyed to the United States title to a 24.25-acre parcel of tide and submerged lands lying in the Pacific Ocean in front of the Entrance of Humboldt Bay, California, pursuant to the Act of the Legislature of the State of California approved March 15, 1889, and in accordance with the Act of Congress of August 5, 1886. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 4, p. 2490.)

7. The Attorney General of the United States in the month of June, 1935, rendered his opinion to the Navy Department finding that the title of the State of California was valid and that a certain deed duly conveyed to the United States a parcel of tide and submerged lands lying in the Pacific Ocean, in front of North Island outside the Bay of San Diego, as well as certain parcels of tide and submerged lands lying within the Bay of San Diego. On June 5, 1934 the Navy Department wrote to the Department of Finance of the State of California and advised that the deed executed by the State of California conveying said tide and submerged lands both in the Pacific Ocean and in the Bay of San Diego had been referred to the United States Attorney in Los Angeles

> "for investigation as to sufficiency of title, after which said deed will be forwarded to the Navy Department in Washington."

On February 11, 1935 the United States Attorney at Los Angeles wrote to the Director of Finance of the State of California advising that said deed conveying said parcels of tide and submerged lands both in the Pacific Ocean and in the Bay of San Diego, had been delivered to his office for review and then stated in part that:

"The Attorney General, in discussing this matter in correspondence, has said in part:

> 'In a similar case where land was to be acquired from the State of New Jersey, the Attorney General approved the title on the certificate of the Land Commissioner, who relatively holds the same position as the Director of Finance of the State of California, that such lands had not been otherwise disposed of. It ought not to be a difficult matter to secure such a certificate in the present instance.'

"We will be pleased to receive from you some sort of certificate which you can prepare, so that we may formally pass the matter.

"The Attorney General has called our attention to a statement in a letter to him from the Secretary of the Navy in which the Secretary has said: 'They [land in question] constitute part of the area the title to which was transferred from the State of California to the City of San Diego by the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1357).'

"In reading the Act of May 1, 1911, at page 1357 of the statutes of that year, we find that certain lands passed to the City of San Diego under certain conditions set forth in said Act. I am wondering if it will be necessary to obtain a quitclaim deed from the City of San Diego."

On June 25, 1935 the Navy Department wrote to the Department of Finance of the State of California and advised that the Attorney General of the United States and the United States Attorney in Los Angeles had approved the title and that the Navy Department thereby accepted the deed from the State of California conveying said parcels of tide and submerged lands in the Pacific Ocean and also in the Bay of San Diego.

IV.

By the Department of the Interior, Its Secretary, and the General Land Office.

Innumerable opinions, decisions and rulings have been made over a period of many decades by the Department of the Interior, its Secretary, and the General Land Office, declaring, holding and ruling that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the borders, limits and boundaries of the State of California. A few of these rulings, decisions and opinions are the following:

1. The Commissioner of the General Land Office, on March 4, 1882, rejected an application of W. E. Morris seeking to file a placer claim under the laws of the United States lying in the ocean between high and low tide on the Pacific Coast in the State of California. In his written opinion (9 Copp's Landowner, p. 5) he stated as follows:

"Wm. E. Morris, Esq.,

678 24th Street, Oakland, California.

"Sir: I am in receipt of your letter of the 15th ulto., asking 'whether or not placer claims on the Pacific coast, lying on the beach, between high and low tide, are open to location and patent under the United States mining laws.'

"In reply, I have to state that the mineral lands, to which the laws of the United States are appliable are, as stated in the original mining act of July 4, 1866, 'mineral lands of the *public domain.*'

*'The shores of navigable waters and the soils under them * * * were reserved to the States respectively.* The new States have the same rights, sov-

ereignty, and jurisdiction over this subject as the original States.' This is the language of the court in Pollard v. Hagan, 3 Howard 212; 15 Curtis 391; and in the case of Ward v. Mulford, 32 Cala. 365, it was specifically stated by the court 'that land covered and uncovered by the ebb and flow of the neap or ordinary tides, the State owns by virtue of its sovereignty.'

"Hence this Department has no jurisdiction over such lands.

"N. C. McFarland, Commissioner."

2. In the year 1926, the First Assistant Secretary of Secretary of the Interior Work issued a ruling letter in response to an application for an oil and gas lease from the Department of the Interior, and therein ruled that the bed of the Pacific Ocean was not a part of the public domain of the United States but that the State of California is the owner of and possesses the submerged lands along its coast seaward for three miles as well as submerged lands in its bays and harbors.

3. Harold L. Ickes, Secretary of the Interior, issued his written opinion and ruling dated December 22, 1933, rejecting an application of Olin S. Proctor for an oil and gas permit or lease under the Federal Mineral Leasing Act of February 25, 1920, as amended, which ruling states as follows:

"The Secretary of the Interior,
Washington, December 22, 1933.

"Mr. Olin S. Proctor,
Long Beach, Calif.

"My dear Mr. Proctor:

"I have received, by reference from the Department of State, copies of your letters of October 15 and November 22.

"As to the jurisdiction of the Federal Government over lands bordering on tidewater, the Supreme Court of the United States has held in the case of *Hardin v. Jordan* (140 U. S. 371), as follows:

" 'With regard to grants of the Government for lands bordering on tidewater, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the State within which they are situated, if a State has been organized and established there. *Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State*—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery—*and cannot be retained or granted out to individuals by the United States.*'

"*The foregoing is a statement of the settled law* and therefore no rights can be granted to you either under the leasing act of February 25, 1920 (41 Stat. 437), or under any other public-land law *to the bed of the Pacific Ocean either within or without the 3-mile limit. Title to the soil under the ocean within the 3-mile limit is in the State of California, and the land may not be appropriated except by authority of the State.* A permit would be necessary to be obtained from the War Department as a prerequisite to the maintenance of structures in the navigable waters of the United States, *but such a permit would not confer any rights to the ocean bed.*

"I find no authority of law under which any right can be granted to you to establish your proposed structures in the ocean outside the 3-mile limit of the jurisdiction of the State of California, nor am I

advised that any other branch of the Federal Government has such authority.

"Sincerely yours,

"(Signed) Harold L. Ickes,
"Secretary of the Interior."

4. On February 7, 1934, Joseph Cunningham filed an application with the General Land Office of the Department of the Interior for an oil and gas permit or lease describing a parcel of 1920 acres of submerged lands lying in the Pacific Ocean off the shore of the City of Huntington Beach, California. On March 3, 1934 Hubert L. Rose, Jr., filed a like application describing a 300-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 5, 1934 Deryll Mayhew filed a like application describing a 1600-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 6, 1934 Fred Vermilyea filed a like application describing a 364-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach.

The Commissioner of the General Land Office on April 18, 1934 rendered his written opinions rejecting said applications and stated in part as follows:

"Huntington Beach is located in Las Bolsas private land grant in California, and the west boundary of said grant is the Pacific Ocean. Therefore, the land applied for in this application is either within the exterior boundaries of the confirmed Las Bolsas land grant, title to which has passed from the Government, *or in the Pacific Ocean. If it is below the line of ordinary high tide, jurisdiction thereover is in the State of California, as upon its admission into*

the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.

"Accordingly, you will notify Cunningham that his application is hereby rejected subject to his right of appeal within 30 days from receipt of notice hereof."

Appeals were taken to the Secretary of the Interior by said Cunningham, Rose, Mayhew and V milyea. On October 4, 1934, the Secretary of the Interior rendered his formal decision and opinion affirming the Commissioner rejecting said application. Said opinion is reported in 55 I. D. 1. The Secretary in his opinion ruled in part as follows:

"The applicant, by his attorney, has appealed on the following grounds:

"1. That an important question, not only of law but of public policy, is involved and neither has probably ever heretofore been presented, argued, or discussed so thoroughly as now proposed.

"2. That, in addition to the above, the question has never been fully and completely considered in the light and trend of present-day thought, legislation and decisions.

"3. That the decision appealed from is contrary to law and the rights of the United States.

"4. That the Supreme Court of California has decided and recognized that the State does not acquire title to minerals by virtue of its so-called "sovereignty."

"5. That the United States has never by act of Congress or otherwise specifically granted, ceded, relinquished or patented tide or submerged lands to the State of California or to any citizen.

"6. That the State of California accepted statehood with the express stipulations and conditions that it would never interfere with the primary disposal of the public lands within its limits, and that it would pass no law and do no act whereby the title of the United States to, and the right to dispose of, the same should be impaired or questioned.

"7. That certain decisions of the courts which may be viewed by some people as lending color or support to the view expressed by the Commissioner can be fully and completely explained and distinguished.

"8. That in view of new conditions and trend of thought fancied precedents should be overruled and the true rule or new precedents established.

"9. That the limited political jurisdiction of California over tide and submerged lands is in trust to police locally and to prevent improper uses of such lands.

"10. That the unit plan of development contemplated by the appellant will not interfere with the development or pursuit of fishing, commerce, or navigation.

"11. That the granting of a permit, and a lease after discovery, will result in the payment of large sums of money to the Federal Government, of which the State of California will receive a large share.

"The appellant and his attorney ask that opportunity be given for oral presentation and argument before the Department and that they be given 'the maximum of time in which to prepare a comprehensive brief covering the history, constitution, laws, decisions, and present trend of opinion, which will be helpful and determinative on the question.'

"In the case of *Knight v. U. S. Land Association* (142 U. S. 161), the court said:

> 'It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the Several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess *within their respective borders. Martin v. Waddell* (16 Pet. 367, 410); *Pollard v. Hagan* (3 How. 212, 229); *Goodtitle v. Kibbe* (9 How. 471, 478); *Mumford v. Wardwell* (6 Wall. 423, 436); *Weber v. Harbor Commissioners* (18 Wall. 57, 65).'

"The case last cited involved tide lands in the State of California, and with respect thereto the court said:

> 'Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, *all soils under the tidewaters within her limits* passed to the State, with the consequent right to dispose of the title to any part of said soil in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, as far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.'

"See also *Shively v. Bowlby* (152 U. S. 1), and the cases therein cited; *Coburn v. San Mateo County* (75 Fed. 520); *United States v. Holt Bank* (270 U. S. 49).

"There is in the State of California a law providing for the issuance of oil and gas prospecting permits and leases on State lands, including tide and submerged lands (Stat. 1921, p. 404, as amended by Stat. 1923, p. 593). In the case of *Boone v. Kingsbury* (273 Pac. 797) the Supreme Court of California upheld the law, stating:

> 'We are satisfied that the State act under consideration is a valid exercise of a right which inheres in the State by virtue of its sovereign power. It does not impinge upon the State or Federal constitutions and is not in conflict with any act of Congress or the State of California.'

"It is probable that the land in question has not been leased by the State because the law referred to provides that no permits or leases shall be granted for tide or submerged lands fronting on an incorporated city or for a distance of 1 mile on either side thereof.

"It is clear that this Department has no jurisdiction. The State of California asserts title to tide and submerged lands under the common law as it has repeatedly been laid down by the Supreme Court of the United States. If any question of title to such lands as between the State of California and the United States is to be tried, it is for the Federal courts.

"Attention may be called to the fact that even if public land were involved no prospecting permit could be granted, because the appellant alleged that the land was within the geologic structure of a producing oil field.

"No useful purpose would be served in any oral hearing before the Department and the request therefor is denied.

"The decision appealed from is

"Affirmed."

On motion for rehearing, the Secretary of the Interior, on November 28, 1934, affirmed his decision of October 4, 1934, as aforesaid. Thereafter, said Cunningham moved the Secretary to exercise his supervisory authority and grant oral argument. In denying said motion, the Secretary, on February 7, 1935, affirmed the prior action rejecting said Cunningham's application, and stated in part as follows:

> "It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean.
>
> "The application was rejected under a rule of law long ago announced by the Supreme Court of the United States and uniformly applied in subsequent decisions up to recent times, and quoted in the decision of October 4, 1934, as follows:
>
> > *'Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper,* subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.'
>
> "The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. Examination of the motion discloses that it presents nothing new, but under some changes in phraseology its contentions are the same that were fully considered when the

decisions in the case were prepared. As stated in the motion for rehearing, 'In substance, petitioner suggests that we disregard these decisions. We are not at liberty to do so.' This is a sufficient and conclusive answer to the matters set up in the motion. No useful purpose would be served by the grant of an oral hearing.

"The motion is without merit and is, therefore, denied."

5. Separate applications were filed July 23, 1934, by W. G. Clark, C. C. Snyder, A. K. Etz, F. A. Curtiss, C. H. Baad and on August 9, 1934 one was filed by J. G. Conway with the General Land Office seeking oil and gas permits or leases. Each application described a separate parcel of 256 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in the vicinity of Point Mugu in Ventura County, California.

On September 18, 1934, the Commissioner of the General Land Office rejected each of said applications by a written opinion which reads in part as follows:

"In each of the above applications it is alleged that the lands applied for are located under the waters of the Pacific Ocean within the jurisdiction of the Federal Government. While the exact location of the lands has not been definitely ascertained, said tracts appear to be under the tidal waters of the Pacific Ocean.

"The oil and gas leasing act under which the above mentioned applications were filed authorizes the issuance of permits to prospect for deposits of oil and gas in lands where such deposits belong to the United States. The title of the act refers solely to the 'Public Domain' and nowhere in the whole act is there any mention made of lands under tidal waters.

"The words 'Public Domain' are synonymous and equivalent in meaning to the words 'Public Lands,' and these terms have acquired a settled meaning in the legislation of this country (Barker v. Harvey, 181 U. S. 481, 490). The words 'Public Lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws (Newhall v. Sanger, 192 U. S. 761, 763). In order therefore that deposits of oil or gas be subject to appropriation under the oil and gas leasing act, the lands containing such deposits must be, or have been, public lands, subject to appropriation under the general land laws respecting the disposal of the public domain. In Mann v. Tacoma Land Co. (153 U. S. 273-284) the Court said: 'It is settled that the general legislation of Congress in respect to public lands does not extend to tidal lands.'

"Congress has never assumed to enact legislation for the disposal of lands under tidal waters. It was said in Barney v. Keokuk (94 U. S. 324, 338): 'The United States has wisely abstained from extending (if it could extend) its surveys and grounds beyond the limits of high water.' To the same effect, see also Baer v. Moran Brothers Co. (153 U. S. 287).

"From the foregoing, it is clear that the lands for which the applications were filed are not subject to appropriations under section 13 of the act of February 25, 1920. Accordingly, the applications are rejected. * * *"

An appeal was taken by said applicants to the Secretary of the Interior who on February 7, 1935 affirmed the action of the Commissioner rejecting said applications, and stated in part as follows:

"By decision of September 18, 1934, the commissioner of the General Land Office rejected the ap-

plications on the ground that the general leasing act of February 25, 1920 (41 Stat. 437), did not extend to lands under tidal waters, citing the cases of *Barney v. Keokuk* (94 U. S. 324); *Mann v. Tacoma Land Co.* (153 U. S. 273); and *Baer v. Moran Brothers Co.* (153 U. S. 287).

"The applicants filed separate appeals but these are all alike and may be disposed of in one decision.

"It is urged that each area applied for is not privately owned; lies outside or beyond privately owned tide-land shore limits, as defined by court decisions; and is not reserved or excluded under any provision of the act of February 25, 1920, *supra* wherefore said act applies and the permit should be granted under this act.

"The appellants have not satisfactorily made any answer to the decisions of the Supreme Court of the United States cited by the Commissioner.

"In the case of Joseph Cunningham, decided October 4, 1934, (.....I. D.....), *this Department held that California Tide lands were not subject to oil and gas prospecting permits under the general leasing act of 1920.*

"In the case of *United States v. Meadows Imp. Co.* (173 Fed. 426) the court said:

> 'In McCready v. Virginia (94 U. S. 391) it was held that *each state owns the bed of all tide waters within its jurisdiction* and that similarly the states own the tide waters themselves.
>
> 'In Manchester v. Massachusetts (139 U. S. 240, 258), the court in citing the case just referred to, declares that it must be regarded as established that between nations the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from its

coast. Both from the language quoted and from the nature of the decision in the Manchester Case, it seems to me to follow that New Jersey may, in the exercise of its sovereignty, extend its own borders for the space of one marine league from low-water mark and make the region so annexed as much a portion of the state as any other part of its territory.

"That the territorial jurisdiction of the United States extended a marine league from the coast of New Jersey was asserted by the trial court and approved by the Supreme Court in Wilborg v. United States (163 U. S. 632).'

"On May 28, 1929 (Stat. 1929, p. 944), *the State of California passed an act providing that no prospecting permit or lease for oil and gas in tide lands or lands in the bed of the ocean should be granted.* Prior to that time the laws of California provided for the issuance of oil and gas prospecting permits and leases on tide lands and submerged lands. See Stat. 1921, p. 404, as amended by Stat. 1923, p. 593.

"In the case of *Carr v. Kingsbury* (295 Pac. Cal. 586) the Court in considering the cited act of 1929, said:

'If the theory of appellant were adopted there would be no tidelands in Huntington Beach to which the terms of the Leasing Act would be applicable, as the city limits extend three miles into the ocean. Tidelands are made such by the water of the ocean flowing over them. Submerged lands are made such by the water standing over them.'

"No authority has been cited for the proposition that the Federal Government owns any part of the bed of the ocean beyond the jurisdiction of the State. In the

case of *Rose v. Himely* (4 Cranch. 241), it was held that after passing the jurisdictional limits of a state, a vessel was as much on the high seas as if in the middle of the ocean. In *Lord v. Steamship Co.* (102 U. S. 541), the court said:

> 'The Pacific Ocean belongs to no one nation, but is the common property of all.'

"It is clear that this Department has no authority to grant oil and gas prospecting permits for tide lands or submerged lands off the coast of California.

"The decision appealed from is affirmed."

6. On August 31, 1934, J. H. Dolan filed an application with the General Land Office for an oil and gas permit or lease covering 120 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 6, 1934, A. M. Weirick filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 11, 1934, C. W. List filed a like application covering 1600 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 13, 1934, P. G. Quinn filed a like application covering 720 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Venice, in the County of Los Angeles, State of California. On September 13, 1934, Clifford Finley filed a like application covering 1280 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Venice.

On October 23, 1934, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

"The act of February 25, 1920 (41 Stat. 437), provides for the issuance of permits to prospect for oil and gas in land where such deposits belong to the United States or public land subject to appropriation under the general land laws regarding the disposal of public domain which does not include lands under the tidal waters of the Pacific Ocean. *The lands in the bed of the Pacific Ocean and tidal lands along the Pacific coast of California, belong to the State of California by reason of its sovereignty.*

"The records in this office show that the Las Bolsas and La Ballona Rancho Private Land Grants extend to the Pacific Ocean. Patents issued on the Las Bolsas Grants on June 19, 1874 to Ramon Yorka *et al.*, and on August 27, 1877 to Jose Justo Murillo *et al.* The La Ballona Rancho Grant was patented on December 8, 1873, to Augustin Machado *et al.* The patents issued without reservation of the oil and gas deposits to the United States and title to the oil and gas deposits therein vested in the patentees. This office has no jurisdiction over the lands in the private land grants *nor over the lands belonging to the State of California.*

"In view of the foregoing, it appears that the lands embraced in the above listed applications are not subject to appropriation under Sec. 13 of the act of February 25, 1920 (41 Stat. 437). Accordingly, said applications are hereby rejected subject to the applicant's right of appeal herefrom within 30 days from receipt of notice, failing in which their respective applications will be finally rejected and the cases closed without further notice from this office."

An appeal was taken by said applicants to the Secretary of the Interior. On February 21, 1935, said Secretary affirmed the decision of the Commissioner rejecting each of said applications and in his opinion of affirmance stated in part as follows:

> "Separate appeals from the Commissioner's decision were filed, but all the applicants were represented by the same attorney and the appeals are all alike. Furthermore, these appeals are the same as in the case of Joseph Cunningham, represented by the same attorney.
>
> "In the Cunningham Case (A-17958, Los Angeles 051805) there have been three decisions by the Department,—on appeal, October 4, 1934, on rehearing, November 28, 1934, and on petition for the exercise of supervisory authority, February 7, 1935. *That application has been finally rejected.*
>
> "No question has been raised in the appeal as to land within any private land grant. *As to lands covered by tide water and submerged lands in the ocean, the Department has consistently held that it has no jurisdiction.* A request for oral hearing is made, but this is denied on the ground that it would serve no useful purpose.
>
> "The decision appealed from is affirmed."

7. On January 17, 1935, F. Dewart filed an application with the General Land Office for an oil and gas permit or lease covering 2560 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of the City of Sunset Beach-City of Seal Beach in the Counties of Los Angeles and Orange, State of California. On January 26, 1935 said Dewart filed another application covering 2560 acres of submerged lands lying in the Pa-

cific Ocean and Santa Barbara Channel thereof in front of the City of Carpenteria, in the County of Ventura, State of California. On January 17, 1935, C. P. Ritter filed a like application covering 2560 acres of submerged lands in front of said Sunset Beach-Seal Beach; and on January 26, 1935, filed a like application covering a like area of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Carpenteria. On January 21, 1935, K. Weyant filed a like application covering 2560 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of said Sunset Beach-Seal Beach.

On April 4, 1935, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The lands described appear to lie in the Pacific Ocean and are described in the application as 'tide lands.' *If the lands lie below the line of ordinary high tide, jurisdiction thereunder is in the State of California which upon its admission to the Union became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends subject to the public right of navigation.*
>
> "You will accordingly notify Dewart that his application is hereby held for rejection subject to his right of appeal within 30 days from receipt of notice hereof."

An appeal having been taken to the Secretary of the Interior by said applicants, a decision was rendered by the Secretary of the Interior, on October 24, 1935, affirming said decision of the Commissioner.

8. On March 6, 1935, O. L. Dillman filed an application with the General Land Office for an oil and gas permit or lease covering 1600 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Santa Barbara.

On September 27, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "The land applied for appears to lie in the Pacific Ocean. *If it is below the line of ordinary high tide jurisdiction thereover is in the State of California as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.* Accordingly you will notify Dillman that her application is hereby rejected."

An appeal was taken by said applicant to the Secretary of the Interior, who rendered an opinion on March 12, 1936, affirming said rejection, stating in part as follows:

> "The appeal is without merit. In the case of *Borax Ltd. v. Los Angeles,* decided November 11, 1935 (296 U. S. 10), the Supreme Court of the United States held that tide lands in California belong to the State. The court said:
>
> > 'The controversy is limited by settled principles governing the title to tidelands. The soils under tidewaters within the original States were reserved to them respectively, and *the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands within their borders as the original States possessed. Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229, 230; *Good-*

title v. Kibbe, 9 How. 471, 478; *Weber v. Harbor Commissioners,* 18 Wall. 57, 65, 66; *Shively v. Bowlby,* 152 U. S. 1, 15, 26. This doctrine applies to tidelands in California. *Weber v. Harbor Commissioners, supra; Shively v. Bowlby, supra,* pp. 29, 30; *United States v. Mission Rock Co.,* 189 U. S. 391, 404, 405. Upon the acquisition of the territory from Mexico, the United States acquired the title to tidelands equally with the title to upland, but held the former only in trust for the future States that might be erected out of that territory. *Knight v. United States Land Assn.,* 142 U. S. 161, 183. There is the established qualification that this principle is not applicable to lands which had previously been granted by Mexico to other parties or subjected to trusts which required a different disposition, —a limitation resulting from the duty resting upon the United States under the treaty of Guadalupe Hidalgo (9 Stat. 922), and also under principles of international law, to protect all rights of property which had emanated from the Mexican Government prior to the treaty. *San Francisco v. Le Roy,* 138 U. S. 656, 671; *Knight v. United States Land Assn., supra; Shively v. Bowlby, supra.* * * *

"It follows that if the land in question was tideland, *the title passed to California at the time of her admission to the Union in 1850. That the Federal Government had no power to convey tidelands, which has thus vested in a State, was early determined. Pollard v. Hagan, supra; Good title v. Kibbe, supra.* * * *'

"The request for oral hearing is denied because such hearing would serve no useful purpose.

"The decision appealed from is affirmed."

9. On March 8, 1935, J. B. Primm filed an application with the General Land Office for an oil and gas permit or lease covering 1600 acres of submerged land lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the Ellwood oil field in the County of Santa Barbara, California. Said application was rejected by the Commissioner of the General Land Office on October 2, 1935. An appeal having been taken to the Secretary of the Interior by said applicant, the decision of the Commissioner rejecting said application was affirmed by the said Secretary on March 12, 1936.

10. On March 12, 1935, E. L. Stanton filed an application with the General Land Office for an oil and gas permit or lease covering 1400 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Naples, County of Santa Barbara, California. Said application was rejected by the Commissioner of the General Land Office, and in his written opinion of rejection the Commissioner stated in part as follows:

> "The land applied for appears to be in the Pacific Ocean. If it is below the line of ordinary high tide, jurisdiction thereover is in *the State of California, as upon its admission into the Union it became by virtue of its sovereignty the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.*
>
> "Accordingly, you will notify Stanton that his application is hereby held for rejection, subject to his right of appeal within 30 days notice hereof, * * *"

11. On March 13, 1935, W. H. Taylor filed an application with the General Land Office for an oil and gas permit or lease covering an area of 500 acres of submerged lands lying in an inlet of the Pacific Ocean in Orange County, California. On November 4, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "According to the records of this office the area applied for as described lies in an inlet of the Pacific Ocean, *and since the absolute title to all tide lands on its borders is in the State of California by virtue of its inherent sovereignty* (see Frank Burns, 10 L. D. 365), the Government is without authority to issue an oil and gas permit therefor under the act of February 25, 1920 (41 Stat. 437)."

An appeal was taken to the Secretary of the Interior by said applicant and on February 9, 1936 said Secretary affirmed the decision of the Commissioner rejecting said application, and in his written opinion of rejection stated in part as follows:

> "The Department has had occasion to consider a number of similar applications. In the case of *Joseph Cunningham*, decided October 4, 1934 (55 I. D. .....), the circumstances were almost identical with those herein. The Department held that it had no jurisdiction.
>
> "In the case of *Dean v. City of San Diego* (275 Fed. 228) the court said:
>
> > 'By repeated declarations of our Supreme Court, with respect to lands acquired by the United States and out of which sovereign states of the Union were thereafter created and set up, it has been definitely decided that *lands lying*

> *beneath the navigable waters of the sea* or any of its arms *became the property of such sovereign state adjacent thereto,* subject only to the rights surrendered to the general government through the federal Constitution. *Pollard v. Hagen,* 3 How. 212; *Weber v. Board Harbor Commissioners,* 18 Wall. 57, 65; *City and County San Francisco v. LeRoy,* 138 U. S. 656, 670.'
>
> "It is clear that there is no public land of the United States as applied for, and the application must therefore be rejected."

12. On May 31, 1935, S. K. Strickler filed an application with the General Land Office for an oil and gas permit or lease, the land therein described by metes and bounds lying in the Pacific Ocean. On the same date, W. M. Strickler filed a like application covering 1600 acres of submerged lands lying in the Pacific Ocean. On June 19, 1935, W. M. Strickler filed another like application for a 165-acre parcel of submerged lands lying in the Pacific Ocean. On October 17, 1936, M. S. Stewart filed a like application for a 46-acre parcel of submerged lands lying in the Inner Harbors of Los Angeles and Long Beach. On the same date, F. C. Prescott, III, filed a like application covering a 37-acre parcel of submerged lands lying in the Inner Harbor of Long Beach.

On January 12, 1937, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The land applied for described by metes and bounds appears to be in the Pacific Ocean according to the records of this office. Jurisdiction thereover is not in the United States but in *the State of California as upon its admission into the Union it became, by*

virtue of its sovereignty, the owner of all the lands extended seaward so far as its municipal domain extends subject to the public right of navigation. Permits or leases for said lands therefore could not be issued. See the case of Joseph Cunningham (55 I. D. 1).

"Accordingly you will notify applicants that the applications are hereby held for rejection subject to their right of appeal within 30 days from receipt of notice, * * *."

Appeals were taken by S. K. Strickler and W. M. Strickler and the same have not been acted upon. No appeals were taken by M. S. Stewart or F. C. Prescott III, and the Stewart case has been closed out.

13. On June 28, 1935, Chester Man filed an application with the General Land Office for an oil and gas permit or lease covering a 2560-acre parcel of submerged lands lying in the Pacific Ocean. On September 28, 1935, the Commissioner of the General Land Office rejected said application. Thereafter said applicant filed an appeal with the Secretary of the Interior and said Secretary affirmed the Commissioner rejecting said application.

14. On June 29, 1935, R. J. Clark filed an application with the General Land Office for an oil and gas permit or lease covering an area of 2560 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta in the County of Santa Barbara, California. On September 22, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

"Said area is submerged and covered by tide water. In a similar application by W. H. Taylor, your series

052415, decided by the Department on January 9, 1935, the Department made reference to the Joseph Cunningham case in which the circumstances were almost identical, and wherein it was held that the Department had no jurisdiction. See 55 I. D. 1, and cited the case of *Dean vs. City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]

"and held that 'it is clear that there is no public land of the United States as applied for, and the application must therefore be rejected.'

"The act of August 21, 1935 (49 Stat. 674), amended the act of February 25, 1920 (41 Stat. 437), so as to authorize the issuance of permits only in cases where applications were filed 90 days or more prior to its enactment, or on or before May 23, 1935, and provided that applications filed after such time shall be considered as applications for leases.

"In view of the above, Clark's application having been filed after May 23, 1935, is considered an application for lease under the amendatory act and is hereby held for rejection in its entirety, subject to his right of appeal within 15 days from receipt of notice hereof, * * *."

On October 13, 1936, an appeal was filed with the Secretary of the Interior by said applicant. Said Secretary affirmed the decision of the Commissioner rejecting said application.

15. On January 16, 1936, C. A. Weigel, G. W. Condon and on February 18, 1936 L. B. Beer each filed separate applications with the General Land Office for oil and gas permits or leases each covering 640 acres of submerged

lands lying in the Pacific Ocean in front of the City of Huntington Beach.

On November 18, 1936, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The land applied for is not subject to lease. In the case of Joseph Cunningham (55 I. D. 1), decided October 4, 1934, the Department held that *the dominion and sovereignty over the soils beneath their tide waters have been reserved to the several states, and that land in the State of California below the line of ordinary high tide is not subject to the issuance of Federal oil and gas prospecting permits, title to said land having passed to the state.*
>
> "Accordingly, you are instructed to notify the applicant that his application is hereby held for rejection in its entirety and that in case of failure to appeal herefrom within thirty days from receipt of notice, * * *."

Appeals were taken to the Secretary of the Interior by said applicants Weigel and Condon. The appeals of C. A. Weigel and G. W. Condon are pending and undetermined by the Secretary. No appeal was taken by said L. B. Beer.

16. On March 7, 1936, H. F. Jones filed an application with the General Land Office for an oil and gas permit or lease covering an area of 300 acres of submerged lands lying in the Pacific Ocean and Long Beach Harbor. On August 27, 1936, J. F. Hurndall filed a like application covering a 61-acre parcel of submerged lands lying in the Inner Harbor of Los Angeles. On August 29, 1936, Clifford Finley filed a like application covering a 67-acre

parcel of submerged lands lying in the Pacific Ocean and Long Beach Harbor. On September 3, 1936, M. W. Purcell filed a like application covering a 99-acre parcel of submerged lands lying in the Inner Harbor of Los Angeles.

Each of said applications was rejected by the Commissioner of the General Land Office. In an opinion dated October 26, 1936, the Commissioner, rejecting said Purcell application, stated in part as follows:

> "However, as the land applied for is below the line of ordinary high tide, jurisdiction thereover is not in the United States, *but in the State of California, as upon its admission into the Union, it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends, subject to the public right of navigation.* A lease for said lands, therefore, cannot be issued, See the case of Joseph Cunningham (55 I. D. 1).
>
> "Accordingly, you will notify Purcell that his application is hereby held for rejection, subject to his right of appeal within thirty days from receipt of notice."

Under date of October 30, 1936, the Commissioner's written opinion rejecting said J. F. Hurndall application stated in part as follows:

> "The area embraced in this application is submerged and covered by tide water.
>
> "It was held by the Department on January 9, 1936, in the case of a similar application, your series 052415, by W. H. Taylor, that the Department had no jurisdiction over such lands. See Joseph Cunningham (55 I. D. 1). The Department cited the case of *Dean v. the City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]

"In view of the above decision, Hurndall's application is hereby held for rejection in its entirety, subject to his right of appeal within 30 days from receipt of notice, * * *"

Appeals were taken to the Secretary of the Interior by each of said applicants. On April 9, 1937 the Secretary rendered his decision affirming the Commissioner in the said *Hurndall* case and on an application for rehearing again affirmed the Commissioner, rejecting each of said applications, therein stating as follows:

"By separate decisions of October 26 and 30, 1936, the Commissioner rejected the applications on the ground that the lands applied for *were either tide lands or submerged lands over which the State of California had jurisdiction and not the United States.* Each applicant appealed to the Department.

"In the case of Floyd E. Pendell (A. 20447, Los Angeles 052752) numerous affidavits and exhibits were filed which covered the lands here involved. An oral argument was heard on December 22, 1936 in the Pendell case and these applications were made part thereof.

"It will be noted that the Jones application is for land along the shore of the ocean and that the others are for lands in the inner bay. All the lands involved are either tide or submerged lands or they are, or were at the time of survey, marsh or swamp land.

"The situation was very fully considered in the Department's decision of February 4, 1937, in the Pendell case, *supra*. On March 25, the Department denied a petition for the exercise of supervisory authority in

that case. The full records have been given very careful attention. *The Department finds there is no land of the U. S. as applied for, and the applications must therefore be rejected.* The decisions appealed from are affirmed."

17. On March 27, 1936, J. L. Griffith filed an application with the General Land Office for an oil and gas permit or lease covering 350 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 23, 1937 the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "By decision of February 7, 1935, in the case of Frederick A. Curtis, *et al.*, Los Angeles 052087-8-9-90-91-116 the Department held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.
>
> "Accordingly you will notify Griffith that unless within 30 days from receipt of notice hereof he appeals herefrom his application will be finally rejected without further notice from this office."

An appeal was taken by said applicant to the Secretary of the Interior. Said appeal has not been determined.

18. On April 11, 1936, T. A. Johnston filed an application with the General Land Office for an oil and gas permit or lease covering 580 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta in Santa Barbara County. On Sep-

tember 25, 1937, the Commissioner of the General Land Office rejected said application, stating in part as follows:

> "The tracts described above in Secs. 16, 17, 18, lot 3 in Sec. 20 and lot 1 Sec. 21, were patented to the State of California on March 20, 1929, under the swamp land acts of September 28, 1850 (9 Stat. 519) and July 23, 1866 (14 Stat. 218). As complete title passed from the Government with above patents this office has no jurisdiction over the lands involved. From the records of this office the remaining lands appear to be tide or overflow lands. In the case of Joseph Cunningham (55 I. D. 1) the Department affirmed the decision of this office in which it was held that *if the land is below the line of ordinary high tide jurisdiction thereover is in the State of California as upon its admission into the Union it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends,* subject to the public right of navigation.
>
> "You will accordingly notify applicant that unless within 30 days from receipt of notice hereof he appeals herefrom his application will be rejected in its entirety without further notice from this office."

Said applicant filed an appeal with the Secretary of the Interior, which appeal has not been determined.

19. On April 17, 1936, G. G. Fisher filed an application with the General Land Office for an oil and gas permit or lease covering a 640-acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Chan-

nel thereof in Santa Barbara County. On May 25, 1936, F. E. Pendell filed a like application covering 620 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta, Santa Barbara County. On May 27, 1936, L. N. Roach filed a like application covering a 160-acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in Santa Barbara County. On June 1, 1936, B. M. Chapman filed a like application covering a 640-acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta, Santa Barbara County.

On September 8, 1937, the Commissioner of the General Land Office rejected each of said applications, and in his written opinion of rejection stated in part as follows:

> "In the Joseph Cunningham case (55 I. D. 1), the Department affirmed the decision of this office in which it was held that *if the land 'is below the line of ordinary high tide, jurisdiction thereover is in the State of California, as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends,* subject to the public right of navigation.' "

No appeal was filed by any of said applicants within the time allowed therefor.

20. On April 29, 1936, F. E. Pendell filed an application with the General Land Office for an oil and gas permit or lease covering 130 acres of submerged lands

lying in the Pacific Ocean and Bay of San Pedro in Los Angeles Outer Harbor. On May 12, 1936, C. E. Walker filed a like application covering 160 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro and Outer Harbor of Los Angeles.

The Commissioner of the General Land Office rejected each of said applications on June 25, 1936, and in his written opinion of rejection of the said Pendell application stated in part as follows:

> "On April 29, 1936, Floyd E. Pendell filed an application for lease under the amendatory act of August 21, 1935 (49 Stat. 674), for a tract of unsurveyed land described by metes and bounds and comprising about 130 acres, more or less, lying in the Pacific Ocean southeast of the Rancho San Pedro private land grant in the State of California. Said private land grant was confirmed on December 15, 1858, and the southeastern boundary thereof is the Pacific Ocean.
>
> "The area embraced in Pendell's application being below the line of ordinary high tide as established by the survey of the San Pedro grant, there is no authority to issue a permit for the same. In the case of an application for oil and gas prospecting permit filed by Joseph Cunningham (55 I. D., pages 1 to 3), the Department held as follows:
>
> > 'Absolute property in and dominion and sovereignty over the soils beneath their tidewaters have been reserved to the several states, so that land in the State of California below the line of ordinary high tide is not subject to prospecting under a Federal oil and gas prospecting permit, *title to said land having passed to the state,* subject only to the paramount right of navigation

over the waters so far as such navigation might be required by the necessities of commerce with foreign nations or among the several states.'

"In view of the above decision, Pendell's application is hereby held for rejection in its entirety, subject to his right of appeal herefrom within fifteen days from receipt of notice hereof."

In his written opinion of rejection, dated June 27, 1936, regarding said Walker application, the Commissioner stated in part as follows:

"The land applied for appears to be in the Pacific Ocean, according to the plat of the San Pedro Grant, and is below the line of ordinary high tide. Therefore jurisdiction thereover is not in the United States, but *in the State of California, as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends,* subject to the public right of navigation. A permit for said land cannot be issued. See case of Joseph Cunningham (55 I. D. 1)."

An appeal was taken by Pendell to the Secretary of the Interior. Said Secretary, on September 25, 1936, affirmed the Commissioner in rejecting said application and stated in part as follows:

"The applicant appealed on the following grounds:

"1. That all minerals on the floor of the ocean and underneath the floor of the ocean belong to the sovereign people of the United States;

"2. That the Commissioner failed and refused to grant the request for a survey;

"3. That the Commissioner rejected the application without permitting the appellant to establish the facts as he had offered to do, and denied him a hearing on his application.

"If the land involved is covered by the waters of the ocean, or is tide land, the United States has no title and said land is not subject to oil and gas prospecting permit. In addition to the case cited by the Commissioner the case of *Borax Consolidated, Ltd. v. Los Angeles* (296 U. S. 10), may be cited.

"The plats of the General Land Office show that the boundary line of the Rancho San Pedro is the Pacific Ocean, and consequently the land applied for is in the ocean.

"The appellant has offered no evidence in support of his assertion that the land involved is not covered by the ocean and is not tide land, but part of the public domain. If that were so there should be some reasonable explanation why it had been omitted from the surveys of public lands. Without any evidence in support of allegations made there is no warrant for any investigation with a view to survey, or for the ordering of a hearing.

"The decision appealed from is affirmed."

Said Pendell moved for a rehearing before the Secretary. A rehearing was granted, oral arguments were heard by the Secretary and numerous affidavits and exhibits were filed with the Secretary by Pendell. On rehearing, an elaborate opinion, dated February 4, 1937, was prepared by the Secretary affirming the Commissioner and rejecting said application. In his opinion on rehearing, the Secretary stated in part as follows:

"A minor contention is made that even if the lands are so situated as to be in the class of tide lands, *nevertheless the mineral deposits therein belong to the United States. This contention must be rejected as untenable,* as repeatedly held by the Department and the courts. *Joseph Cunningham* (55 I. D. 1); *Borax*

Consolidated, Ltd. v. Los Angeles (296 U. S. 10), the latter involving lands in Los Angeles Harbor.

"The main contention is based on the theory that large areas of land above mean high tide exist, and existed at the time of the survey of Rancho San Pedro, between the ocean and the survey lines of the said grant, and that it was not intended that said omitted areas be included in the grant as surveyed and patented. Numerous affidavits designed to support this contention have been filed. Several of them merely state that the lands have been above high tide for many years. These, of course, have no material value, considering the fact that the grant was surveyed in 1857, and the further acknowledged fact of changes made since then by extensive dredging and filling operations in connection with the development of Los Angeles Harbor. In the interpretation of the survey it is necessary to consider conditions as they existed at the time the survey was executed.

"Certain other of the affidavits, however, are more to the point in that they assert that some parts of the land have been above high tide for many centuries. The material portions of these affidavits are incorporated in this decision for ready reference in the consideration of the case.

* * * * * * * *

"The claim of Pendell (130 acres) together with the claim of Jones (300 acres) and the claim of Walker (160 acres) is outlined on a chart of the Coast and Geodetic Survey of the date of April, 1935. The three claims combined, as there depicted, comprise an area of 590 acres extending along the shore of the Pacific Ocean for a distance of more than three miles, with a minimum width of about 10 chains to a maximum width of about 39 chains. This area is supposed to represent high land between the high water

line of the ocean and the meander line of the survey of the San Pedro Grant.

* * * * * * * *

"The affidavits themselves go far toward explanation of the changes that have taken place in this area, and the charts submitted by the General Land Office demonstrate beyond reasonable doubt that no substantial areas of the lands embraced in the application were of such size or character as to justify a ruling that title thereto remains in the United States. The survey called for a line "along high water mark of the ocean." Even if some areas were above high tide but were swamp or marsh land, as indicated in some of the affidavits, they were probably of the character which would entitle the State to claim them under the swamp land grant, and it has been held that mineral lands are not excepted from the swamp land grant. See *Work v. Louisiana* (269 U. S. 250). Furthermore, even if some projections of high dry lands were left between the meander line and the ocean, that would afford no reason for the Government to claim such areas as public lands in the absence of fraud or gross error in the survey. Meander lines of bodies of water are not run as boundaries of title, but in order to show the approximate location of the water which bounds the lands granted, and to furnish the basis for calculation of the approximate area granted.

* * * * * * * * *

"It has not been shown that there was any material error in meandering the ling of mean high tide in the survey of the Rancho San Pedro as claimed by applicant, and the motion is accordingly denied."

Said Pendell thereafter filed a petition requesting the Secretary of the Interior to exercise his supervisory power

and reconsider said application. On March 25, 1937, the Secretary rendered an opinion denying said petition for the exercise of supervisory authority and affirmed the decision of the Commissioner rejecting said application. In said opinion of March 25, 1937, the Secretary stated in part as follows:

> "The grounds of the rejection were that the survey of the patented Rancho San Pedro called for the Pacific Ocean and that *any land below mean high tide passed to the State and could not be treated as public land of the United States.*"

21. On August 17, 1936, C. B. Reynolds, Jr., filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands in the Pacific Ocean in front of the City of Huntington Beach. On the same date said Reynolds likewise filed a similar application covering 640 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of Elwood, Santa Barbara County. On August 17, 1936, Myrtle A. McCurry filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On the same date, C. B. Reynolds, Jr., filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Santa Barbara. On the same date, L. J. Chambard filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean and San Pedro Channel thereof and Bay of Santa Monica in front of the City of Venice in Los Angeles County, California. On the same date, D. W. Churchill filed a like application cover-

ing 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach.

On October 27, 1936, the Commissioner of the General Land Office rejected each of said applications and his written opinion of rejection stated in part as follows:

> "The areas embraced in the above described applications are submerged and covered by tide water.
>
> "It was held by the Department on January 9, 1936, in the case of a similar application, your series 052415, by W. H. Taylor, that the Department had no jurisdiction over such lands. See Joseph Cunningham (53 I. D. 1). The Department cited the case of *Dean v. the City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]
>
> "and held that 'It is clear that there is no public land of the United States as applied for, and the application must therefore be repected.'
>
> "In view of said decision, the above applications are hereby held for rejection, subject to the applicant's right of appeal within thirty days from receipt of notice."

Appeals were filed with the Secretary of the Interior covering said applications, and on January 13, 1937, the Secretary affirmed the Commissioner in rejecting each of the applications Nos. 052791, 052794 and 057295 of C. B. Reynolds, Jr., Nos. 052792, 052793 and 052796 of Myrtle A. McCurry, Nos. 052797, 052799 and 025801 of D. W. Churchill, and Nos. 052798, 052800 and 052802 of L. J.

Chambard. In his formal opinion of rejection (56 I. D. 60. 61) the Secretary stated in part as follows:

"The stated grounds of appeal are in substance as follows:

"The important question of ownership of valuable mineral rights in lands beneath the Pacific Ocean, below the line of low tide off shore from Southern California, title to which has not yet been determined by any Federal Court, is involved.

"The right to minerals by the laws of Spain remained in the Crown, were retained by Mexico while she was sovereign of this territory, and passed to the United States with the territory of California.

"The long-established mineral policy of the United States sustaining its mineral rights as a separate property with specific requirements for their acquisition is being violated.

"It was early spelled out by judicial construction that the separate title to all minerals within the public domain is retained by the United States, and this has been adhered to in a long line of decisions and is too firmly intrenched to be changed save by legislative action.

"Decisions of the Supreme Court of the United States cited in rejection of the applications are based on the act admitting California into the Union on an equal footing with the thirteen original States. The title to minerals in tidelands is not discussed.

"In the case of *Borax, Ltd. v. Los Angeles,* 296 U. S. 10, the Supreme Court of the United States, speaking through Chief Justice Hughes, said: [Quoted above in subparagraph 8 of this Paragraph IV.]

"Title to the lands involved passed to the State of California in 1850. There was then no provision of

law for reserving possible mineral deposits. There was no established mineral policy of the United States. In this connection see the case of *Work v. Louisiana*, 269 U. S. 250.

"The decisions appealed from are affirmed."

22. On August 17, 1936 and August 29, 1936 five applications were filed with the General Land Office, two by Myrtle A. McCurry and one each by D. W. Churchill, L. J. Chambard and Clifford Finley, for oil and gas permits or leases, each covering 640-acre tracts of submerged lands lying in the Pacific Ocean and Santa Barbara Channel or San Pedro Channel thereof, one in front of Elwood, Santa Barbara County, one in front of the City of Santa Barbara, one in front of the City of Venice, Los Angeles County, and the balance in front of Seacliff, Santa Barbara County.

On October 26, 1936, the Commissioner of the General Land Office denied each of said applications and in his written opinion of rejection stated in part as follows:

"Reference is made to the following oil and gas lease applications filed in your office under the amendatory act of August 21, 1935 (49 Stat. 674):

"Serial "Number	Name	Date
"052793	Myrtle A. McCurry	August 17, 1936
"052796	Myrtle A. McCurry	August 17, 1936
"052799	Douglas W. Churchill	August 17, 1936
"052802	Lemoyne J. Chambard	August 17, 1936
"052804	Clifford Finley	August 29, 1936

"The land applied for, described by metes and bounds, appears to be in the Pacific Ocean, according to the plat of the San Pedro grant, and is below the

line of ordinary high tide. Jurisdiction thereover is not in the United States, but *in the State of California, as upon its admission into the Union it became, by virtue of its sovereignty, the owner of all lands extended seaward so far as its municipal domain extends,* subject to the public right of navigation. A lease for said land, therefore, could not be issued. See the case of Joseph Cunningham (55 L. D. I.)."

Appeals were filed by each of said applicants with the Secretary of the Interior and said Secretary affirmed the Commission in rejecting each of said applications in his formal opinion reported in 56 I. D. 60, above quoted.

23. On August 17, 1936, D. W. Churchill filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands in the Pacific Ocean and Santa Barbara Channel thereof lying in front of Seacliff in the Rincon oil field area. On October 26, 1936, the Commissioner of the General Land Office rejected said application and his opinion of rejection stated in part as follows:

"The land applied for appears to lie in the Pacific Ocean and below the line of ordinary high tide. Accordingly, jurisdiction thereover is not in the United States, but in the State of California, as upon its admission into the Union, it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends, subject to the public right of navigation. A lease for said lands, therefore, cannot be issued. See the case of Joseph Cunningham (55 I. D. 1)."

Appeal was filed by said applicant with the Secretary of the Interior and said Secretary affirmed said applica-

tion in his formal opinion reported in 56 I. D. 60 above quoted.

24. On August 17, 1936, L. J. Chambard filed another application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On October 31, 1936, the Commissioner of the General Land Office rejected said application with a written opinion similar to his ruling of September 26, 1936, set forth hereinabove. An appeal was filed by said applicant on December 4, 1936, with the Secretary of the Interior. Said Secretary affirmed the Commissioner in rejecting said application in the formal opinion reported in 56 I. D. 60, quoted above.

25. On March 9, April 6, April 19, May 6, and May 25, 1937, six applications for oil and gas permits or leases were filed with the General Land Office, three by R. E. L. Jordan, one by R. E. L. Jordan, Jr., one by Earl Brown, and one by F. J. Olson, describing many thousands of acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of the City of Long Beach and in the Pacific Ocean in front of the City of Huntington Beach. On June 8, 1937, and on July 20, 1937, the Commissioner of the General Land Office rejected each of said applications and in written opinions of rejection stated in part as follows:

> "April 6, 1937, Robert E. Lee Jordon filed oil and gas lease application, Los Angeles 052976, for certain submerged land lying in the Pacific Ocean between the tide lands and the three mile limit off the shores of the State of California.
>
> "By decision of February 7, 1935, in the case of Frederick A. Curtiss, *et al.*, Los Angeles 052087-8-9-

90-91-116, the Government held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.

"Accordingly, you will notify Jordan that unless within 30 days from receipt of notice hereof he appeals, his application will be finally rejected in its entirety without further notice from this office."

In his written opinion of rejection of the other of said applications, the commissioner said in part that:

"Oil and gas lease applications under above serial numbers filed by F. J. Olson on May 6 and R. L. Jordan, Jr., on May 25, and Earl Brown May 25, 1937, respectively, have been received in this office.

"The above applications embrace submerged lands in the Pacific Ocean lying off the coast of California and in each case the applicant has furnished power of attorney to Robert E. Lee Jordan and requested that all notices be sent to him at 3916 Ardmore Street, South Gate, California.

"These applications are hereby denied. See the case of Frederick A. Curtiss *et al.*, Los Angeles 052087-8-9-90-91-116, wherein by decision of February 7, 1935, the Government held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California."

Appeals were taken to the Secretary of the Interior by each of the applicants and said appeals have not been determined.

26. On April 20, 1937, David Romey and R. L. Jordan, Jr., filed an application with the General Land Office for an oil and gas permit or lease covering 1080 acres of submerged lands adjoining the San Pedro Breakwater in the Pacific Ocean and Bay of San Pedro. The Commissioner of the General Land Office on June 2, 1937, rejected said application and his opinion of rejection stated:

> "April 20, 1937, David Romey and R. L. Jordan, Jr., filed application under above serial number for oil and gas lease for certain lands described by metes and bounds which appear to be submerged lands under the Pacific Ocean and off the coast of California.
>
> "By decision of February 7, 1935, in the case of Frederick A. Curtiss *et al.*, Los Angeles 052087-8-9-90-91-116, the Department held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.
>
> "Accordingly you will notify Jordan that unless within 30 days from receipt of notice hereof, he appeals herefrom his application will be finally rejected without further notice from this office."

Appeals were taken by said applicants which appeals have not been determined.

27. On June 26, 1937, E. J. Preston filed an application with the General Land Office for an oil and gas permit or lease covering 2443 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 21, 1937, the Commissioner of the

General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "In the case of Joseph Cunningham (55 I. D. 1), the Department affirmed the decision of this office, in which it was held that if the land applied for is below the line of ordinary high tide, jurisdiction thereof is in the State of California, *as upon its admission to the Union it became by virtue of its sovereignty the owner of all the lands extending seaward, so far as its municipal domain extends,* subject to the public right of navigation."

Said applicant filed an appeal with the Secretary of the Interior, which appeal has not been determined.

28. On July 9, 1937, R. E. L. Jordan filed an application with the General Land Office for an oil and gas permit or lease covering 1525 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Redondo Beach. On September 16, 1937, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "In the case of Joseph Cunningham (55 I. D. 1), the Department affirmed the decision of this office in which it was held that if the land is below the line of ordinary high tide jurisdiction thereover is in the State of California, *as upon its admission into the Union it became by virtue of its sovereignty the owner of all the lands extending seaward so far as its municipal domain extends* subject to the right of navigation."

An appeal was taken by said applicant to the Secretary of the Interior and said appeal has not been determined.

V.

By the War Department, Navy Department, and Officers Thereof.

The War Department, the Secretary of War, the Chief of Engineers of the United States Army, the Board of Engineers for Rivers and Harbors, the District Engineer Office, the Navy Department and officers thereof, have, over a period of many decades, ruled, declared and reported, pursuant to requirements of Acts of Congress, that the State of California and its grantees, respectively, are the owners of the tide and submerged lands lying within the boundaries, borders and limits of the State. Among these declarations, rulings and reports are the following:

1. The War Department, through its Corps of Engineers and the United States Engineer's Office, filed 17 different maps with the Surveyor General of the State of California and with the several county offices in said State, depicting various areas of submerged lands lying in the Pacific Ocean, as well as lying in the entrance to the bays and in the harbors of the State of California, filed pursuant to the Act of March 9, 1897, whereby the State of California granted to the United States parcels of submerged lands extending 300 yards beyond low water mark around military and naval reservations and islands. The details of these maps prepared and filed by the War Department, as aforesaid, is more particularly set forth in Paragraph A-I of this Second Affirmative Defense.

On March 25, 1906, the Secretary of War denied an application for a permit of Randolph H. Miner to con-

struct a bulkhead and fill in certain submerged lands in the Pacific Ocean and Bay of San Pedro. On March 11, 1906, the Chief of Engineers of the United States Army reported in writing to the Secretary of War concerning the aforesaid application of Randolph H. Miner, and there stated in part as follows:

> ". . . approval of which (application) was denied on the ground that the fill contemplated behind the bulkhead would occupy *certain lands under water granted to the United States by the State of California* [under said Act of March 9, 1897] . . . This action was taken after reference of the matter to the Judge Advocate General."

2. The Secretary of War reported to Congress, in the year 1924, the grant by the State of California to the United States made by said Act of the Legislature of March 9, 1897, of a parcel of submerged lands 300 yards wide around Deadman's Island in the Pacific Ocean and Bay of San Pedro, and stated in part as follows:

> "By Act of the Legislature, *the State of California granted to the United States parcels of land extending from high water mark out to 300 yards beyond low water mark* lying adjacent and contiguous to such lands of the United States . . . The United States has claim to land of approximately 36 acres around Reservation Point and lying easterly of the probable 1000 foot channel."

3. In a report dated September 30, 1924, the Commandant of the Eleventh Naval District of the United States Navy Department reported to the Chief of Naval Operations on the necessity for acquiring title from the State of California to tide and submerged lands lying along the shore of and in the Pacific Ocean adjacent to

North Island in San Diego County, California, and there stated in part as follows:

> "There are other tide lands adjacent to North Island to which the Government should secure title. *These are the tide lands along the Ocean front.* At the present time *title to these lands lies with the state* and technically therefore the Government does not have control of the beach. The description of these lands is as follows:"
>
> [Setting forth the description of tide and *submerged* lands extending out to the pierhead line *in the Pacific Ocean as the same may thereafter be established by the Federal Government.*]

4. The War Department, through its District Engineer Office, on March 27, 1941, wrote to the State of California requesting that the State Legislature be requested to authorize a grant to the United States of a 32.8 parcel of submerged lands lying in the Pacific Ocean in San Diego County, in exchange for a like parcel of tide and submerged lands lying in the Bay of San Diego and acquired by the United States from the State of California under said Act of March 9, 1897. In said communication the War Department there stated in part:

> "This proposed plan is for the United States to convey to the State of California all property contained in the Military Reservation known as 'Coronada Beach', in exchange *for an equivalent area of state land on the ocean side* of Silver Strand opposite said Military Reservation . . . *It is understood that conveyance of state lands is made only by an Act of the State Legislature.*"

5. The War Department through its Chief of Engineers reported to Congress (1887 Annual Report, Chief of Engineers, United States Army, Part 3, pages 2447-48) with respect to a 24.25 acre tract of tide and submerged lands lying in the Pacific Ocean at the entrance to Humboldt Bay, California, title to which was sought to be granted to the United States by Act of the Legislature of the State of California, that:

> "An assistant was accordingly sent to Humboldt Bay, who, . . . made careful plats connected with the land office surveys of land required above high water mark and the tide-lands adjoining, *the title to which was vested in the State of California.*"

6. The War Department, through its United States District Engineer and Chief of Engineers, reported to Congress in the year 1924, in House Document 349, 68th Congress, First Session, pp. 46-47, and in recommending an appropriation by Congress for improvement of the Los Angeles, Long Beach Harbors, referred to submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of Terminal Island then being reclaimed by said parties, and stated as follows:

> "All land on the south shore of Terminal Island can be reclaimed very cheaply as incident to dredging operations in the inner harbors. Between Fish Harbor [on the Ocean side of Terminal Island in the City of Los Angeles] and the silt diversion channel [being the easterly boundary of the Long Beach Outer Harbor] under protection of the breakwater extension, *perhaps 1000 acres could be so reclaimed.* A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1000 acres. *Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.*"

7. In the year 1936 the Board of Engineers for Rivers and Harbors of the United States War Department, prepared and published a written report entitled "THE PORTS OF LOS ANGELES AND LONG BEACH, CALIFORNIA." Said report was prepared pursuant to the requirement of the Act of Congress known as The Transportation Act of 1920, Section 500. Said report stated in part as follows:

> "Los Angeles Harbor has approximately 40 miles of water front. Out of a total of 66,446 linear feet of improved wharf frontage, *44,582 linear feet are owned by the City of Los Angeles* and operated by its Board of Harbor Commissioners, while the remainder, or 21,864 linear feet are owned or controlled by various commercial concerns.
>
> *"The City of Los Angeles administers 1581 acres of tide land of which 916 acres have been reclaimed.*
>
> "Under the law *tide lands cannot be sold,* but under certain conditions may be leased for not to exceed 30 years for industrial and commercial pursoses, such leases providing for a rental adjustment at the end of each 10-year period.
>
> "Revocable permits are under certain circumstances issued for other purposes, usually limited to smaller areas and for 30 days.
>
> "The following *schedule of rental for tide lands was adopted by the Board of Harbor Commissioners in 1923.* A readjustment schedule of rents for large industrial areas is applied when other revenue such as wharfage or dockage will accrue to the city from such a lease."

By said report entitled "THE PORTS OF LOS ANGELES AND LONG BEACH, CALIFORNIA," the Board of Engi-

neers for Rivers and Harbors reported, with respect to the Long Beach Harbor, in part, as follows (p. 182):

> "Approximately 95% of the water front in Long Beach Inner Harbor is privately owned, *while that in the outer harbor is municipally owned.*"

8. In a report prepared in 1939 by the Board of Engineers for Rivers and Harbors, United States War Department, and by the United States Maritime Commission, entitled "THE PORTS OF SAN FRANCISCO, OAKLAND, ALAMEDA, RICHMOND AND UPPER SAN FRANCISCO BAY, CALIFORNIA," made pursuant to Section 500 of the Transportation Act and Section 8 of the Merchant Marine Act, it is reported (p. 17) as follows:

> "The harbor front of San Francisco is owned by the public, *title being vested in the State of California.* The jurisdiction of the board of State harbor commissioners covers that portion of the water front on San Francisco Bay from the Presidio around the Bay front to the boundary line between San Francisco and San Mateo Counties, a distance of approximately 10 miles. The principal terminal development has been in the 7-mile portion lying between the Army transport docks at Fort Mason and Hunters Point, about 5½ miles of which has been extensively developed. The Embarcadero, a 200-foot thoroughfare, *owned and maintained by the State,* runs along the water front adjacent to the piers, the wholesale and shipping district, and numerous industries from Hyde Street to the channel.

"The land area under the jurisdiction of the board of State harbor commissioners comprises 1,912 acres, consisting of *105 acres of seawall lots and other reclaimed lands,* 204 acres in the Embarcadero and other streets, *491 acres of submerged land* inside the seawall line, and *1,112 acres of submerged land between* the seawall and the pierhead line. The area of the piers and wharves *owned by the board* totals 195.62 acres, including 119.18 acres of covered and 76.44 acres of uncovered area. Of the covered area 7.54 acres are on upper floors and of the uncovered, 1.61 acres."

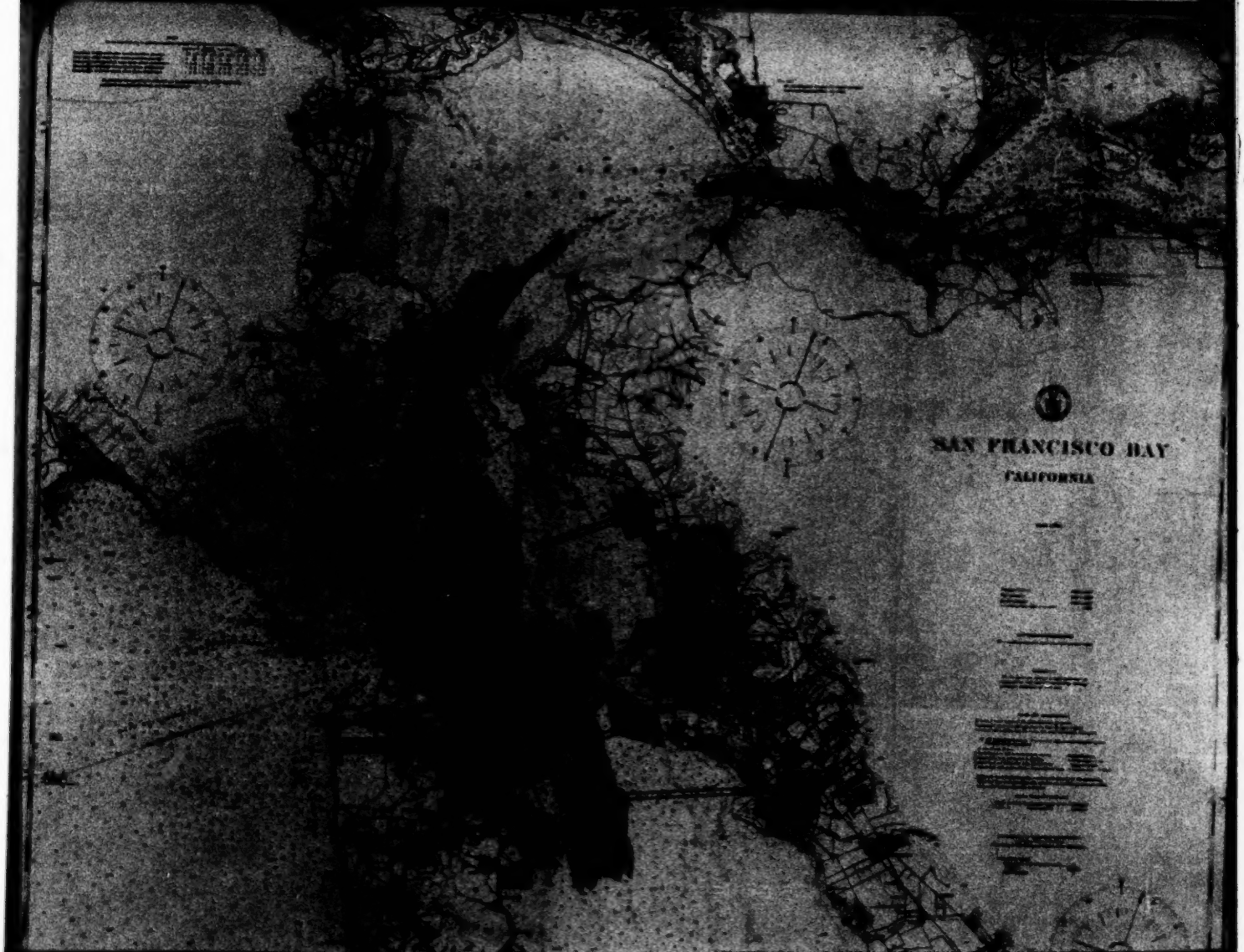
In said 1939 Report, The Board of Engineers for Rivers and Harbors and the United States Maritime Commission, with respect to the City of Oakland (p. 134 of said 1939 Report) stated:

"*On May 1, 1911, the legislature of the State of California granted to the city of Oakland all its right and title to the tideland* lying south of the southerly line of East Fourteenth Street and east of the easterly boundary line of the city of Oakland. By negotiation and compromise with private interests the city has gained title to nearly all of the important water-front property, and *now owns approximately two-thirds of the 21.3 miles of water frontage included in the port area.* As stated in the preceding paragraph, there is a total of 28 piers and a yacht harbor *on city-owned property,* 11 of which are leased to private interests. *Approximately 1,000 acres of land suitable for industrial development is*

owned by the municipality and under the jurisdiction of the board of port commissioners."

9. By an Act of Congress approved August 29, 1916, the President was authorized to appoint a commission of five naval officers to investigate and report as to the necessity, desirability and advisability of establishing an additional navy yard or naval station on the Pacific Coast of the United States. It was provided in said Act that if such a navy yard or naval station should be recommended, said report should designate the most suitable site and the estimated cost thereof, together with a statement of the reasons for such designation. Pursuant to the provisions of said Act, the President of the United States appointed a Commission on Navy Yards and Naval Stations, which Commission submitted six reports which are embodied in House Document No. 1946, 64th Congress, 2d Session. A substantial portion of said report was devoted to a consideration of various sites in and around the Bay of San Francisco which had been proposed for the location of a navy yard or naval station. There was attached to and made a part of Part 2 of said report a map of the San Francisco Bay Region on which were designated the proposed sites considered by said Commission.

Said map is entitled "San Francisco Bay, California" and bears the legend "Published at Wasington, D. C., July 1910; reissued Dec. 1916 by the U. S. Coast and Geodetic Survey." A photostatic copy of said map is set forth as follows:


SAN FRANCISCO BAY
CALIFORNIA



The proposed sites considered by said Commission for a navy base or a naval station are designated on the foregoing maps by the same numbers which are used in referring to such sites in the text of said report.

(a) In describing and comparing certain of the various San Francisco Bay Region sites, said Commission on Navy Yards and Naval Stations stated in Part 2 of its report as follows:

1. "Site No. 1—Hunters Point (Point Avisadero).

"122. This is the site formally presented for consideration by the city and county of San Francisco, at a hearing held in City Hall, San Francisco, December 11, 1916, a copy of which is attached as Appendix M. During the past 10 years many reports have been made to the Navy Department on the advantages of this site for a Government docking and repair plant on deep water. It consists of any portion or all of the rocky peninsula that *extends out to deep water in the bay about 6,000 feet,* and has an average width of 2,000 feet; and *also of the adjacent tide and submerged land lying north and south of Hunters Point between the shore and the bulkhead line,* and having the following acreage:

	Private ownership— Acres	Owned by City— Acres	Total Acres
Zone A, submerged land north of Hunters Point	94	84	178
Zone B, upland of Hunters Point north of the center ridge	83	52	135
Zone C, upland of Hunters Point south of the center ridge	88	53	141
Zone D, submerged land south of Hunters Point as far as South Basin	259	169	428
Zone E, submerged land between South Basin and the county line	345	218	563
Total	869	576	1,445

* * * * * * * *

". . . Hunters Point is a hill of soft rock with a ridge or backbone running out to the point approximately along the middle that has an elevation of from about 150 to 200 feet. There is very little level or moderately sloping ground. It has not been divided into streets on the ground, *but practically all the lots, both upland and submerged, are held in private ownership. There are some 2,000 parcels of land. The city owns all the land that has been reserved for streets.* Along the bulkhead line, the *State of California has also reserved and owns a recessed area, just north of the point, called India Basin, and one on the south called South Basin,* that are not included in the foregoing acreage." (Pages 50-51.)

On page 52 the Commission referred to certain communications from private individuals and civic officials with reference to the cost and extent of the land around Hunters Point and in conclusion it was said on page 53:

"127. From the foregoing it is seen that out of the total acreage for upland and *submerged land* of 1,445 acres, *the city will donate 576 acres to the United States without* cost, and that, in the judgment of the mayor, the average price for the remaining 869 acres should be between $1,000 and $1,200 an acre."

2. "Site No. 2—Visitation Valley.

"128. This is an area of about *500 acres of tide and submerged land* in San Mateo County, about 2 miles south of Hunters Point, with a shore frontage of about 3,700 feet *and extending out into the water about 6,000 feet.* A dredged channel about 2 miles long would be necessary to give access to deep water (40 feet. * * * This site is less advantageously placed than site No. 1, and the value of the land as given is higher. *It could be developed more economically if distant from shore several thousand feet, where less dredging to deep water would be necessary and where the State owns the land,* which would obviate the purchase of most of the private land which has been offered. This site is appreciably less desirable than site No. 1, but has the advantage of much greater proximity to deep water than the other sites farther south. This site will not be included in making final comparison." (Page 53.)

3. "Site No. 6—San Leandro Bay.

"* * * * * * * *

"The Oakland Chamber of Commerce, acting in conjunction with the Fitchburg Social and Improve-

ment Club, has submitted a proposition covering about 742 acres, or any part thereof, fronting on San Leandro Bay. *About 200 acres consists of low-lying bay-shore lands and the remainder is tide and submerged land.*" * * * (Page 55.)

4. "Site No. 7—Alameda.

"135. *This site consists largely of submerged land in shallow water* and lies in the bay immediately west of Alameda and south of the Alameda Mole that protects the entrance to Oakland Harbor. It is really an alternate to San Leandro Bay site No. 6; that is, instead of dredging a channel to San Leandro Bay, it is as though that site had been moved over 6 (statute) miles to the northwest out near deep water. * * * *Three years ago, the State of California granted the city of Alameda in trust, a portion of the land included in this site, amounting to 864 acres of land lying between the shore and the pier head line,* with the proviso that the city spend $200-000 to develop the area within five years. No expenditures have yet been made. *About one-half of site No. 7 lies in this area, and the remainder occupies land outside of it that is owned by the State.*

* * * * * * * *

"In reply to an inquiry addressed the mayor of Alameda, *asking if the city is willing to grant to the United States the use of such of its tide and submerged land as may be required,* a favorable reply, dated January 18, 1907, was received, which is attached as Appendix N, and which stated that the city would cooperate with the National Government in every way. A resolution to this effect, as passed by the city council on January 16, is also attached as Appendix N, part 2. * * *." (Pages 55 and 56.)

5. "Site No. 9-A—Oakland.

"139. *This site has been offered by the owner, Mr. F. M. Smith, of Oakland, and consists of 553 acres of tideland and submerged land on the shore of Berkeley* immediately north of the Key Route trestle and fill. To even up the outside boundary line, *Mr. Smith proposes that 150 acres of submerged land, owned by the State, be also considered as a part of this tract,* making a total area of 703 acres. * * *"

6. "Site No. 9-B—Oakland.

"140. This is an alternate to site No. 9-A and bears a relation thereto, somewhat similar to the relation of site No. 7 to site No. 6. Site No. 9-B consists of an unlimited *tract of submerged land* lying immediately north of the outer end of the Key Route trestle and fill, and west of No. 9-A. *The land is owned by the State and would be obtainable without cost.* Permission would have to be obtained from the War Department to fill outside of the established bulkhead line. * * *"

7. "Site No. 10-A. Richmond-Albany.

"141. This site, on the east shore of the bay, has been presented for consideration by the cities of Berkeley, Albany, and Richmond, and *consists of any portion of a tract of about 1,972 acres held in private ownership* by a number of individuals and corporations, and *of which 1,520 acres are tide and submerged land,* 66 acres are marsh, and 386 acres are upland." (Pages 57 and 58.)

"* * * * * * * *

"By resolution No. 905, passed by the council on January 15, 1917, and by resolution No. 110, passed by the trustees on January 8, 1917, copies attached as Appendix O, parts 6 and 7, *Richmond and Albany, respectively, expressed their willingness to cede any interests they have in tidelands adjacent thereto to the United States* for naval purposes without cost." (Page 59.)

8. "Site No. 10-B—Richmond-Albany.

"146. This is the same layout as site No. 10-A, except that the latter is moved out to the vicinity of deep water, as shown on chart No. 5532 (Appendix L). *In this location the land belongs to the State* and no purchase would be necessary. The consent of the War Department would have to be obtained to fill in outside of the bulkhead line. The amount of dredging would be much less for site No. 10-B than for site No. 10-A. The island formed by the fill could be connected with the shore by a trestle or mole. This site would have the disadvantages of being more difficult of access, and of being more remote from centers of labor and material, than 10-A." (Page 60.)

9. "Site No. 14.—El Campo (California Point).

"156. This site is in Marin County on the west shore of the bay, just north of the naval coaling plant, and lies between Point Chauncey and California Point. It includes any part of about 1,034 acres of upland and *160 acres of tide and submerged land.* The upland rises sharply from the shore to an elevation of from 400 to 600 feet and it is probable that not more than about 50 acres of it could be made use-

ful by grading. The tide lands average 3 or 4 feet below low water, and extend along the shore a distance of about 10,000 feet. . . .

"157. *The price asked for the tide lands alone is $650 per acre,* and the price asked for the 1,194 acres of tide land and upland is $664,938, or an average price of about $650 per acre. The great advantage this site possesses is proximity to deep water. The 40-foot contour comes up close to the shore for over two-thirds of its length, and is readily obtainable with very little dredging for the remainder. The value of this is diminished, however, by the comparatively small amount of submerged land capable of reclamation and upland available for grading adjacent thereto. . . ." (Page 64.)

10. "Site No. 16—Richardson Bay.

"160. Richardson Bay is a shallow body of water of irregular shape that opens off from the north side of the Golden Gate and lies between Tiburon and Sausalito Peninsulas. The surrounding hills rise quite sharply from the water's edge, and there is very little of the upland that could be graded economically for industrial purposes. This land, which has been offered to the Navy as an advantageous location for a docking and repair yard, training station, and naval academy by Mr. A. H. Thompson of Sausalito, several times during the past few years, consists of any portion of about 2,262 acres, *of which about 1,400 acres are tide and submerged land* and the balance upland. *One thousand and sixty-five acres of this tideland* and 767 acres of upland *are held in private own-*

ership by different parties, and a uniform price of $650 per acre has been placed thereon. . . ." (Page 65.)

(b) In Part 5 of its report (submitted at a later date than was Part 2 referred to above) said Commission on Navy Yards and Naval Stations gave further consideration of certain of the sites referred to above. One of the sites thus given further consideration was site No. 7, Alameda. In connection with said site it was stated in Part 5 of said report (House Document No. 1946, 64th Congress, 2nd Session) at pages 24 and 25:

"SITE No. 7. ALAMEDA.

"19. *This site consists of tide and submerged land* lying immediately south of the Alameda Mole and west of the city of Alameda. . . ."

"* * * * * * * *

"* * * This site possesses a number of important advantages, viz:

"First. *The land is held in public ownership and can be obtained free of cost for the use of the United States through joint action taken by the State of California and the city of Alameda.* Legislation passed by California since Report No. 2 was presented is explained by letter from the mayor of Alameda of July 16, 1917, Appendix E, part 2, and indicates that the only steps necessary to turn this area over to the United States is to present the matter to the electors of Alameda for confirmation, which will be done any time desired, and there seems to be no doubt as to the electors confirming the grant."

(c) Attached to and made a part of Part 5 of said Report and contained in Appendix E, Part 1 thereof, are copies of certain correspondence between the senior member of said Commission and the United States Attorney for the Northern District of California relative to the acquisition by the United States of the tide and submerged lands comprising said site No. 7. By a letter dated January 16, 1917, and addressed to the senior member of said Commission, one Edward K. Taylor, an attorney at law, of Alameda, California, called the attention of said Commission to the fact that the State of California, by an Act of the Legislature approved June 11, 1913 (Stats. 1913, page 707) had granted to the City of Alameda all tide and submerged lands below the line of ordinary high tide within said City for harbor purposes, subject to the condition, however, that said City should not grant or convey any part of said land. It was suggested in said letter that such grant by the State of California might be amended by the Legislature in order to permit the transfer of tide and submerged lands to the United States Government as a site for a naval base or naval station. On January 19, 1917, the senior member of said Commission sent to the United States Attorney in San Francisco, California, a telegram reading as follows:

> "Have wired Edward K. Taylor, Alameda, suggesting he confer with you in *formulating legislation permitting Alameda to cede tidelands to Government* for naval purposes. Desirable that such legislation be broad enough to grant similar authority to other localities in the State if this will not complicate situation, causing delay. Alameda site is simply one

of several now under consideration. Commission has no authority to bind Government in any way. Letter follows."

Said United States Attorney replied to said senior member of said Commission by a telegram dated January 23, 1917, reading as follows:

"San Francisco, Cal., January 23, 1917.

"Rear Admiral J. H. Helm, Bremerton, Wash.

"Have given consideration to Alameda site matter; also conferred with mayor and city attorney. *The rights of Alameda in this tideland are contingent and will probably be lost unless additional legislation granted this session.* Present belief is that grant should come direct from State to Government, and city should then consent or allow her present rights to lapse, thus confirming Government's title. City charter and also terms present grant, should same become operative, would entail serious difficulties that might be impossible to overcome. *Have decided, with your permission, to prepare bill making grant direct to Government.* Does this meet your approval? If so, have you any suggestions as to boundaries or other provisions to go in bill? Three days only to introduce bill if method suggested by city be adopted. A pending bill already introduced could be amended. Introduction of bill I suggest would enable matter to be carefully considered and proper choice be made between the two methods. Answer immediately.

PRESTON, United States Attorney."

The course of action recommended by said United States Attorney in said telegram was approved by the senior

member of said Commission by a telegram dated January 23, 1917, reading as follows:

"NAVY YARD, BREMERTON, WASH.,

"January 23, 1917

"J. W. PRESTON
United States District Attorney, San Francisco, Cal.:

"Replying to your telegram to-day, bill making grant direct to Government, as recommended by you, satisfactory, with understanding that grant becomes effective only if Government should definitely select this site for naval purposes within reasonable time. Desirable also to provide, if practicable, for city's rights to be revived if Government does not use this ground, so that it would lose nothing by this arrangement. Suggest matter of boundaries be left as open as possible, as in absence of any subsurface examination no definite location practicable at this time.

J. M. HELM."

Thereafter the California Legislature considered the proposal made by said United States Attorney pursuant to the foregoing correspondence, and by an Act approved May 24, 1917 (Stats. 1917, page 907) the said Legislature amended the Act by which the State of California had granted to the City of Alameda all tide and submerged lands within its boundaries (Stats. 1913, page 707) to authorize said city to "grant, give, convey and alien such lands or any portion thereof, forever to the United States for public purposes of the United States;" with the approval of a majority of the electors of said city. Said Act of 1917 further provided that the right of the state (reserved in said Act of 1913) to the free use of

wharves, docks, piers and other improvements constructed on said lands should not apply to improvements constructed by the United States on such lands conveyed to the United States.

(d) Attached to and made a part of Part 5 of said Report of said Commission on Navy Yards and Naval Stations and forming a part of Appendix E thereof, are copies of certain correspondence between the senior member of said Commission and the United States Attorney for the Northern District of California with respect to the title to certain tide and submerged lands then forming in San Pablo Bay near Mare Island and certain tide and submerged lands lying to the north of Goat Island in San Francisco Bay. Under date of February 17, 1917, the said United States Attorney for the Northern District of California, addressed a letter to the senior member of said Commission, which letter reads as follows:

"SAN FRANCISCO, CAL., February 17, 1917.

"Rear Admiral J. M. HELM, U. S. Navy, Commission on Navy Yards and Naval Stations, Washington, D. C.

"Sir: Replying in part to your letters of December 11 and 16 regarding the tidal lands which are forming in San Pablo Bay, adjacent to the southwest shore of Mare Island, Cal., and tidelands lying to the north of Goat Island, in San Francisco Bay, your attention is invited to an act of the Legislature of the State of California, of March 9, 1897, which provides as follows:

" 'The people of the State of California, represented in senate and assembly, do enact as follows:

" 'SECTION 1. All the right and title of the State of California in and to the parcels of land extending from high-water mark out to three hundred yards beyond low-water mark, lying adjacent and contiguous to such lands of the United States in this State as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense, are hereby granted, released, and ceded to the United States of America; the boundaries of each parcel of land hereby granted, released, and ceded to the United States to be a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right angles to high-water mark, at the points where the boundaries of the adjacent lands of the United States touch high-water mark:'

* * * * * * * *

"I do not know whether the lands referred to in your letters exceed in extent the lands granted by the above statute, as we have no maps showing the extent of the tidal lands referred to in the act.

"The title of tidelands lying without the area referred to in this statute is in the State of California by right of sovereignty, unless the State has already disposed of same. I have directed an inquiry to the surveyor general of the State of California as to the

latter proposition and will inform you further when I hear from him.

"It is our opinion that the theory of accretion does not apply to a case of tidelands forming adjacent to tidelands, the title to which is held by the United States. While in the State of California accretions to the soil belong to the owner of the bank (sec. 1014, California Civil Code), land cannot be claimed as an accretion where it is a sand bar forming in the bed of a stream and not above ordinary high-water mark; and an accretion caused by the erection of a wharf or other structure has been held not to belong to the owner of the bank.

"Respectfully,

"JNO. W. PRESTON, United States Attorney."

10. The War Department of the United States, through its District Engineer's Office at Los Angeles, in about the year 1942, prepared a written plan for the establishment of a Port of Embarkation at Los Angeles Harbor, and on said date said plan was communicated to the Board of Harbor Commissioners of the City of Los Angeles. Said plan considered the question of the most suitable of three sites in the Los Angeles Harbor for such purpose, being plans (a), (b) and (c). Said Report recommended the adoption of either plan (a) or plan (b) as being satisfactory to the War Department. Plan (a) involved the use of one of two parcels: Parcel 1 consisting of 111.6 acres; and Parcel 2 consisting of 49.4 acres, both parcels being tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro, situated between the East and West Channels in the Outer Harbor of Los Angeles under lease to Outer Harbor Dock and Wharf Company, as hereinabove alleged, and between the lower fill at Fort

MacArthur and a line formed by the extension of the inshore area of the Outer Harbor Breakwater. Said Report, in discussing the advantages of the different plans and after noting that the Los Angeles Harbor Department officials favored the use of plans (a) and (b) rather than plan (c), stated in part as follows:

> "The construction of permanent facilities by a Governmental agency on other than government-owned land is forbidden by law, and *it will therefore be necessary for the United States to acquire ownership of either site selected.* It is believed the most satisfactory method whereby *the United States might acquire such ownership is by vote of the People of Los Angeles on the Act sponsored by the Harbor Department.*
>
> "At this time, however, to enable the War Department to choose between the two sites, it is requested that the Board of Harbor Commissioners submit a statement of the terms and conditions which they will recommend to be incorporated in an Act transferring all rights which the City may have in the various parcels of land shown in both red and blue." (This refers to the map attached.)
>
> "As a further aid in determining the extent of development desired, it is also requested that prices quoted be submitted by parcels as shown. It is understood that both sites will not be taken."

11. Numerous other reports, declarations and rulings of the War Department and the Navy Department that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the boundaries of the State of California, are set forth in preceding portions of this Second Affirmative Defense.

FILED
JAN 28 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. ~~12~~, Original

[redacted]6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

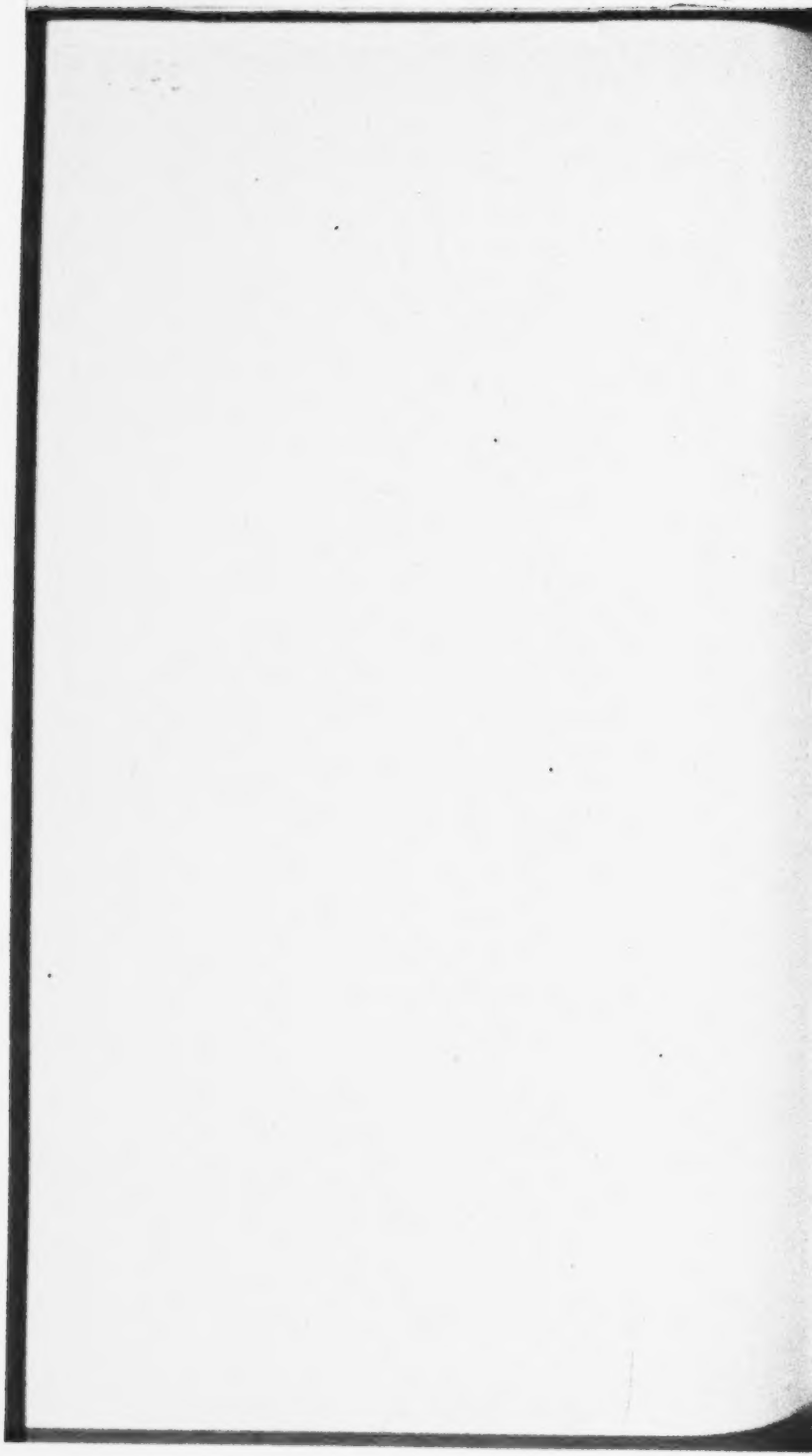
Defendant.

ANSWER OF STATE OF CALIFORNIA

PART III

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D.

Grants by Other Coastal and Great Lake States to the United States; and Recognitions and Exercise of Their Ownership of Tide and Submerged Lands.

The coastal states of the Union other than California, and likewise the Territory of Alaska, and the Great Lake states, have made grants to the United States of tide and submerged lands, both along their coasts, and within their bays, harbors, rivers and lakes, and the United States, through its various branches, departments and agencies acting within the scope of their authority as prescribed by law, has declared, ruled and decided, over a period of many decades, that said coastal and Great Lake states and said Territory, respectively, are the owners of all the tide and submerged lands within the exterior boundaries thereof. A few illustrations of these grants from each coastal State, and a few illustrations of such recognitions of the title of and exercise of ownership by, each coastal State, are set forth as follows:

I.
District of Alaska.

1. The Territory of Alaska was ceded to the United States of America by treaty with Russia, proclaimed June 20, 1867. (13 Stat. 539; 1 Thorpe, American Charters, Constitutions and Organic Laws (1909), p. 235.)

2. By Act approved May 17, 1884, Congress established the territory as the "District of Alaska" and made provision for a civil government for said District; and in 1909, and thereafter, enacted further legislation for the civil government of the District of Alaska. (31 Stat. pp. 321-552.)

3. Congress has declared and legislated that any future State formed out of the District of Alaska shall be the owner of the beds and soils under all navigable waters within such State. By Act of May 14, 1898 (30 Stat. 409, 48 U. S. C. A., Sec. 411), in extending the homestead laws and providing for rights of way for railroads in the District of Alaska, Congress provided in part as follows:

> "And when such railway shall connect with any navigable stream or tide water, such company shall have power to construct and maintain necessary piers and wharves for connection with water transportation, subject to the supervision of the Secretary of the Treasury: *Provided, That nothing in this Act contained* shall be construed as impairing in any degree *the title of any State* that may hereafter be erected out of said District or any part thereof, *to tide lands and beds of any of its navigable waters,* or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be *held by the United States in trust for the people of any State or States* which may hereafter be erected out of said District. The term *'navigable waters,' as herein used, shall be held to include all tidal waters up to the line of ordinary high tide* and all non-tidal waters navigable in fact up to the line of ordinary high-water mark."

4. The Department of the Interior, its Secretary, and the Commissioner of the General Land Office, have, on numerous occasions, ruled and decided that the tide and submerged lands within the boundaries of the District of Alaska are held in trust by the United States for the future State or States to be erected out of said District,

which State or States upon admission into the Union shall become the owner of such tide and submerged lands. Congress has never attempted to authorize a conveyance by the General Land Office of any tide and submerged lands within the District of Alaska, or elsewhere.

(a) On April 19, 1898, the Secretary of the Interior rendered a decision affirming the Commissioner of the General Land Office in rejecting an application of Red Star Olga Fishing Station, a corporation, for a patent covering a 34.83 acre parcel of partly tide and submerged lands on the shore of High Bay, Kodiak Island, District of Alaska, used as a fishing station. The said Commissioner, in the decision appealed from, had ruled in part that:

> "The deputy should have followed, with his meander, the line of ordinary high water mark along the shore line of the main land, thus excluding from the survey the tide water *which the Government does not give title to* * * *."

In his decision affirming the Commissioner, the Secretary of the Interior stated in part (26 L. D. 533) that:

> "* * * It is not proper that tide lands should be embraced in a survey, since there is no general or existing law of Congress with respect to the public lands whereby title may be acquired to tide lands. See case of Shively v. Bowlby, 152 U. S. 1; Mann v. Tacoma Land Company, 153 U. S. 273."

(b) On January 3, 1900, the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office rejecting a claim of J. W. Logan for a placer mining location to certain tide and submerged lands in the Behring Sea off the coast of Alaska. The stated object of said Logan in filing such placer mining claim was

"to work the ground under the water." The Commissioner in his decision appealed from expressed the opinion that:

> "* * * Tide lands in the District of Alaska are not public lands of the character subject to disposal under the land laws of the United States, and that the land department is without authority to make any cession in the premises."

In his decision affirming the Commissioner, the Secretary of the Interior ruled in part (29 L. D. 395) that:

> "Under the laws of the United States relating to mineral lands and mining claims (which * * * were extended to the District of Alaska * * *), only mineral lands belonging to the United States are open to exploration, occupation, location and purchase * * *.
>
> "The remaining question presented is: Are the tide lands in the District of Alaska, public lands belonging to the United States, within the meaning of the mining laws?
>
> "In the case of Shively v. Bowlby (152 U. S., 1-58) the supreme court had under consideration the question of the title to certain tide lands in the State of Oregon. In its decision of the case, the court, after an elaborate and exhaustive review and discussion of the whole general subject of the ownership and control of the tide lands in the various States and Territories of the United States, summed up its conclusions as follows:
>
> " 'Lands under tide waters are incapable of cultivation or improvement in the manner of lands above high water mark. They are of great value to the public for the purposes of commerce, navigation and fishery. Their improvement by individuals, when

permitted, is incidental or subordinate to the public use and right. Therefore the title and the control of them are vested in the sovereign for the benefit of the whole people.

'At common law, the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation. Upon the settlement of the colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American revolution, these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the constitution to the United States.

'Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory.

'The new States admitted into the Union since the adoption of the constitution have the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions. The title and rights of riparian or littoral proprietors in the soil below high water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

'The United States, while they hold the country as a Territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. But they have never done so by general laws; and, unless in some case of

international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the States, respectively, when organized and admitted into the Union.

'Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high water mark, and do not impair the title and dominion of the future State when created; but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the constitution in the United States.'

"In view of the law as thus declared, and of the stated policy theretofore prevailing with respect to tide lands, in the absence of specific legislation by the Congress in relation to the tide lands of the District of Alaska at variance with said policy, *there can be no doubt that such tide lands are not public lands belonging to the United States, within the meaning of the mining laws,* and that no rights whatever can be acquired with respect thereto by exploration, occupation, location, or otherwise, under said laws.

"It is proper in this connection to also refer to the act of May 14, 1898 (30 Stat., 409), entitled 'An act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes,' wherein it is provided:

[Quoted in Paragraph 3 above.]

* * * * * * * *

"This legislative declaration is in entire harmony with the law as it had been previously announced by the supreme court in the case above cited, *and is indicative of a purpose on the part of the Congress, in dealing with the District of Alaska, to adhere to the policy theretofore existing with respect to the tide lands.*

"In view of all the foregoing it is perfectly clear that the mining locations in question, so far as it is attempted by them to embrace lands lying below the line of ordinary high tide, are without authority of law and therefore void, and that the land department is without authority to grant any concessions whatever with reference to the desired occupancy or working of said tide lands for mining purposes, or otherwise. The views expressed by your office in this respect are accordingly approved and you will so notify Mr. Logan, furnishing him with a copy of this opinion."

(c) On January 30, 1900, the Secretary of the Interior approved an opinion rendered by Assistant Attorney General Van Devanter (later Mr. Associate Justice Van Devanter), rejecting an application of Nome Transportation Company for a permit or right of way along the northern shore of Norton Sound near Safety Harbor, District of Alaska. In considering the applicability of certain acts of Congress as affecting said application, said opinion stated in part as follows:

"The statute authorizes the issuance of a permit for a right of way only 'over the public domain.' Tide lands are not a part of the 'public domain' within the meaning of that term as used in the statute (*Shively v. Bowlby,* 152 U. S. 1, 58; *In Re James W. Logan,* 29 L. D. 395)."

(d) On January 10, 1903, the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office rejecting an application of J. C. Martin for a right of way and wharf franchise extending to deep water in front of Valdez Townsite in the District of Alaska. The Secretary there decided (32 L. D. 1) that the Act of Congress of May 14, 1898, did not authorize the granting of any rights to lands under navigable waters, stating in part that:

> "* * * The Act of 1898 authorizes the issuance of a permit for a right of way only over the public domain, and the lands reserved as a public highway, *and the tide lands over which it is proposed to construct a pier or wharf, are not a part of the public domain within the* meaning of that term, as so used in said Act. (Nome Transportation Company, *supra,* and cases therein cited.)"

(e) On June 29, 1915, the Secretary of the Interior rendered a decision with respect to tide and submerged lands at Juneau, Alaska, and in his decision stated (44 L. D. 441) in part that:

> "* * * finally under the later English common law the judges established the doctrine that the title to the foreshore was vested in the Crown, subject to certain public rights, unless the riparian owners could produce evidence to show that it had been acquired by them under some grant expressed or implied. See Farnham on Waters and Water Rights, Volume 1, Chapter 4. The common law of England upon this subject which was adhered to at the time that the English Colonies in America were established, was adopted and at that time the later doctrine had prevailed. The common law of England, therefore, has since been adhered to except in so far as it has been

lified by the charters, constitutions, statutes, or
ges of the several Colonies and States, or by the
stitution and laws of the United States. See
vely v. Bowlby, 152 U. S., 1. It has become the
led rule of law as laid down by the United States
reme Court that upon the acquisition of territory
United States acquires title to the tide lands
ally with the title to the upland, but that with re-
t to the former the government holds it only in
t for the future States that might be erected out
uch territory. See Knight v. United States Land
ociation, 142 U. S., 183. Having once rightfully
uired territory the United States under the consti-
on is the only government which can impose laws
n such territory, and it, therefore, has entire do-
ion and sovereignty, national and municipal, fed-
and state, over such territory, so long as it re-
ns in a territorial condition. American Insurance
npany v. Canter, 1 Peters, 511, 542. In this re-
t, however, the United States, as has been said
ve, merely holds the tide lands or foreshore as
tee for the benefit of the future State or States
rwards to be carved out of the territory. Con-
s has, however, the power to make grants of tide
ls whenever it becomes necessary to do so in or-
to perform international obligations or to effect
improvement of such lands for the promotion and
venience of commerce or to carry out other public
poses appropriate to the objects for which the
ted States holds such territory, but Congress has
er undertaken to dispose of tide lands by general
s. Congressional grants of portions of the public
ain which border upon the mean high water mark
navigable waters do not convey of their own force
title or right to the lands below the mean high
er mark, and they do not in anywise impair the

title and dominion of the future State when it shall be created. See Wright v. Seymour, 69 Cal. 122; Weber v. Harbor Commissioners, 18 Wall. 57, 64; and Mann v. Tacoma Land Company, 153 U. S. 273. When the United States acquired the Territory of Alaska by purchase it assumed undisputed dominion thereover and became the owner of all of the lands therein. The provisions of the general land laws of the United States were not applicable to it and the settlers afterwards settling upon lands within that Territory acquired no title in the soil. By the act of May 14, 1898 (30 Stat., 409), Congress extended the homestead laws to the District of Alaska and made provision for the disposition of the public lands therein under certain conditions. It expressly stated, however, in the third proviso of section 2 of that act that no rights which should be acquired thereunder were to anyway impair the title of any State or States that may hereafter be erected out of the District of Alaska to tide lands and beds of navigable waters, it being declared that the same shall continue to be held in trust by the United States for the future State or States which may hereafter be created. Said act did not, therefore, authorize the disposition of the foreshores or tide lands in Alaska, and without some express legislation authorizing the disposition of such lands the title thereto cannot be acquired. As stated above Congress may, however, dispose of the foreshores or tide lands if it considers it expedient to do so. Such has been done in at least one case in Alaska. See the act of February 6, 1909 (38 Stat., 598), authorizing the disposition of tidal land on Cordova Bay. * * *."

(f) On March 12, 1924, the Solicitor of the Department of the Interior rendered an opinion, approved by the Secretary of the Interior, involving the title to certain tide and submerged lands near the town of Ketchikan in the District of Alaska. In said opinion it is stated in part (50 L. D. 315) that:

> "In prior communications to this Department, Mr. Paul stated that the natives are tired of their present location in Ketchikan and for various reasons desire to move to some other locality near by. With this in view, Mr. Paul inquired if the natives would be permitted to sell their holdings, and by departmental letters of October 2 and December 1, 1923, he was advised that there is no authority under existing law by which these lands can be sold. It was further pointed out that by section 2 of the act of May 17, 1908, Congress had declared an intent to hold the tidelands and the beds of navigable streams in Alaska in trust for the people of the future State or States, to be created out of that Territory, and that in the absence of additional legislation by Congress this Department was without authority to make any other disposal thereof. I see no occasion here to question the soundness of that view. As previously shown, until Congress grants some greater title, the right of the native in Alaska is simply one of use and occupancy. Nor does the reservation of a particular area for their benefit result in placing actual title in the Indians. This is clearly shown by the ruling of the Supreme Court in the Alaska Pacific Fisheries case,

supra, involving the reserve for the Setlakahtla Indians, wherein the court said, page 88:

> 'The reservation was not in the nature of a private grant, but simply a setting apart, "until otherwise provided by law," of designated public property for a recognized public purpose—that of safeguarding and advancing a dependent Indian people dwelling within the United States.'

"Prior to the admission of a new State Congress has the power, of course, by grant or otherwise, to dispose of lands underlying navigable waters, tide or inland, in any of the territorial domain of the United States. Shively v. Bowlby (152 U. S. 1). In the absence of specific legislation by that body, however, title to such lands can not be acquired by any individual or group of individuals, Indian or otherwise. Mann v. Tacoma Land Company (153 U. S., 273) and Alaska Pacific Fisheries v. United States, *supra.* So, also, about the plenary power of Congress over tribal Indian property there can be no doubt, and in the absence of an express grant the power so resting in Congress extends even to the abrogation, by statute, of the provisions of a prior treaty. See Lone Wolf v. Hitchcock (167 U. S. 553, 565), and cases there cited.

"I am of the opinion that the tide or other lands occupied by or reserved for the Indians at Ketchikan, Alaska, can not be disposed of under existing law but that the power rests with Congress, by statute, with or without the consent of the Indians, to provide for the ultimate disposal of those lands."

II.

State of Washington.

(I)

The State of Washington was admitted into the Union and its boundaries were established in the following manner:

1. Pursuant to the Enabling Act of Congress approved February 2, 1889, the Constitution of the State of Washington was adopted and was, pursuant to said Act, proclaimed by the President of the United States as having been formed and adopted pursuant to said Enabling Act (Proclamation No. 8, Nov. 11, 1889; 26 Stat. 1552.) By the terms of said Enabling Act, upon such proclamation by the President of the United States, the State of Washington was thereupon

> "deemed admitted by Congress into the Union, and under and by virtue of this Act, on an equal footing with the original states, on and after the date of such proclamation."

2. By Article XXIV of the Constitution of the State of Washington, thus proclaimed by the President of the United States pursuant to said Enabling Act of Congress, the boundaries of said State were established as follows:

> "§1. STATE BOUNDARIES.—The boundaries of the State of Washington shall be as follows: Beginning at a point *in the Pacific Ocean one marine league* due west of and opposite the middle of the mouth of the north ship channel of the Columbia River; thence running easterly to and up the middle channel of said river and where it is divided by islands up the middle of the widest channel thereof, to where the forty-sixth parallel or north latitude crosses said river, near the

mouth of the Walla Walla river; thence east on said forty-sixth parallel of latitude to the middle of the main channel of the Shosshone or Snake river; thence follow down the middle of the main channel of Snake River to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due north to the forty-ninth parallel of north latitude; thence west along said forty-ninth parallel of north latitude to the middle of the channel which separates Vancouver's Island from the continent, that is to say to a point in longitude one hundred and twenty-three degrees, nineteen minutes and fifteen seconds west; thence following the boundary line between the United States and British possessions through the channel which separates Vancouver's Island from the continent to the termination of the boundary line between the United States and British possessions *at a point in the Pacific Ocean equidistant between Bonnilla Point, on Vancouver's Island, and Tatoosh Island lighthouse; thence running in a southerly course and parallel with the coast line, keeping one marine league offshore, to place of beginning.*"

(II)

In its Constitution thus proclaimed by the President of the United States as adopted pursuant to said Act of Congress, the State of Washington declared in Article XVII, Section 1, as follows:

"§1. DECLARATION OF STATE OWNERSHIP.—The State of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: Provided, that this

section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state."

(III)

The State of Washington has, at the request of the United States, made grants and leases to the United States, and the United States has exercised its power of eminent domain by condemning tide and submerged lands within the State of Washington. Likewise the United States, by its various branches, departments and agencies, has declared, ruled and decided, over many decades, that the State of Washington is the owner of all tide and submerged lands within its exterior boundaries. A few illustrations of these grants, condemnations, declarations and rulings, are the following:

1. By Act of the Legislature of the State of Washington approved March 13, 1909, entitled "An Act Granting to the United States for Public Purposes the Use of Certain Tide and Shore Lands Belonging to the State of Washington," the State made grants to the United States of tide and submerged lands both along the coast and in the bays, harbors, rivers and lakes extending out to a depth of four fathoms of water at low tide around United States Military and other reservations. Section 1 of said Act of March 13, 1909 (Sess. Laws, 1909, p. 390, sec. 1; sec. 6860 Rem. Code of Wash. 1916; sec. 8116 Rem. Comp. Stat. Wash. 1922), provides as follows:

"That the use of any tide and shore lands belonging to the State of Washington, and adjoining and border-

ing on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the Government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, prisons, penitentiaries, lighthouses, fog-signal stations, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the Government of the United States for any of the public purposes above mentioned: *Provided,* that *this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide;* and shall not be construed to prevent the citizens of the State of Washington from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States; * * *."

2. In the year 1925, the United States claimed ownership of the tide and submerged lands extending out to a depth of four fathoms of water around Fort Canby Military Reservation, which reservation includes the south point of Cape Disappointment. Cape Disappointment is the extreme northern headland in the Pacific Ocean at the entrance of the Columbia River. A map showing the location of Cape Disappointment (also known as Cape Hancock) and of Peacock Spit in the entrance to the Columbia River is set forth as follows:

WASHINGTON



MOUTH OF
COLUMBIA RIVER

CHART A

OREGON
1851

WASHINGTON
OREGON

A controversy arose between the military authorities of Fort Canby and H. F. McGowan as to the latter's right to fish with a dragnet seine upon and in the vicinity of Peacock Spit. Said Spit is situated about one mile southeast of the southernmost point of the uplands of Fort Canby Reservation on Cape Disappointment. The military authorities contended that Peacock Spit and all the tide and submerged lands lying within one and one-half miles of the southern point of Cape Disappointment are the property of the United States. McGowan contended that said tide and submerged lands in the mouth of the Columbia River and in the Pacific Ocean belong to the State of Washington. The military authorities of Fort Canby claimed ownership on behalf of the United States of said tide and submerged lands, in part, under said Act of March 13, 1909. This question was submitted to the Attorney General of the United States, who, on March 20, 1925, rendered his written opinion to the Secretary of War. (34 O. A. G. 428.) The Attorney General there considered at length the grant from the State of Washington to the United States of tide and submerged lands extending out to a depth of four fathoms of water under said Act of March 13, 1909. The opinion states in part as follows:

> "While the use of the tide lands adjoining the Fort Canby Reservation has been granted by the State to the Federal Government for military purposes, the fishing rights in the waters covering said lands have been reserved to the citizens of the State of Washington.
>
> "In view of the foregoing, it is my opinion that the military authorities in charge at Fort Canby have no authority to prevent citizens of Washington from fishing in the waters of the Columbia River lying within

the boundaries of the State of Washington, even though such waters may lie within one and one-half miles of the southern point of Cape Disappointment, now the Fort Canby Military Reservation.

"Answering your specific questions, I have the honor to advise you that:

"First, Peacock Spit and all other tide lands lying within one and one-half miles of the southern point of Cape Disappointment . . . do not belong to the United States, although the use of such lands has been granted by the State of Washington to the United States for military purposes, so long as the adjoining shore lands are so used.

"Second. The State of Washington may legally permit fishing upon and in the vicinity of such tide lands."

In said opinion of March 20, 1925, the Attorney General of the United States further stated that:

"In the reservation for military purposes of the tract of land on Cape Disappointment 'lying within one and a half miles of the southern point of the Cape,' no specific reservation of the tide lands or the lands underlying the navigable waters of the Columbia River was made, and in the absence of definite words reserving to the United States such tide lands, *it is my opinion that title thereto passed to the State upon its admission to the Union.*"

The Attorney General of the United States in said opinion dated March 20, 1925, in considering the decisions of this Honorable Court on the title and ownership of the soil under navigable waters and the effect of the Executive Order of February 26, 1852, whereby the President estab-

lished the Fort Canby Military Reservation, and General Order No. 9 of the War Department, defining the boundaries of said reservation as including all the land lying within one and one-half miles of the southern point of the Cape, further stated that:

"It is contended, however, that General Order No. 9 can not have the effect of modifying the Executive order of 1852 reserving for military purposes 'all the land lying within one and a half miles of the southern point of the Cape.' It is observed that the order of 1852 reserves 'from sale or grant' the 'tracts of land' described in the order. It is apparent that this order reserving tracts of land for military purposes referred only to the land then, or which might in the future become, subject to disposal by the United States under its public-land laws. . . .

"The United States, upon acquiring territory by cession, treaty, or by discovery and settlement, *take the title and the dominion of lands below high-water mark of tide waters for the benefit of the whole people and in trust for the future States to be created out of the territory. Knight v. United States Land Association,* 142 U. S. 161. While the country so acquired is held as a Territory, the United States have all the powers both of national and municipal government, and may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But Congress has never undertaken by general laws to dispose of said lands. *Shively v. Bowlby, supra,* page 48 . . . *it is my opinion that title thereto passed to the State upon its admission to the Union."*

3. By an Act of the Legislature of the State of Washington, approved March 20, 1890, entitled "An Act Grant-

ing to the United States for Public Purposes the Use of Certain Tide Lands Belonging to the State of Washington," the State of Washington granted to the United States the use of any tide or submerged lands extending out to a depth of four fathoms of water below low tide belonging to the State of Washington adjoining and bordering on any tract of land held or reserved by the United States for the purposes mentioned therein. (Laws of Washington 1889-1890, p. 263.) Said Act contained no specific reservation of fishing rights as did the Act of March 13, 1909, referred to above. Section 1 of said Act of March 20, 1890, reads as follows:

> "That the use of any tidelands belonging to the State of Washington, and adjoining and bordering on any tract, piece of parcel of land held or reserved by the Government of the United States for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards and other needful buildings, be and the same is hereby granted to the United States so long as the upland adjoining such tidelands shall continue to be held by the Government of the United States for any of the *public purposes above mentioned;* Provided, that *this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide;* and provided further, that whenever the Government of the United States shall cease to hold for *public purposes* any such tract, piece or parcel of lands, the use of the tidelands bordering thereon shall revert to the State of Washington."

Following the rendition of the opinion of March 20, 1925, of the Attorney General of the United States, above set forth in Paragraph 2 hereof, the Commanding Officer of the Ninth Corps Area, War Department, transmitted

a report to the Attorney General furnishing further facts with respect to Peacock Spit and its formation and requesting a further opinion of the Attorney General as to the ownership and jurisdiction of the United States thereover. The additional facts thus furnished by the War Department disclosed that part of Peacock Spit above mean high tide was built up following the construction in 1917 of North Jetty, built by the United States, extending into the Pacific Ocean and mouth of the Columbia River adjoining the Fort Canby Military Reservation. Prior thereto, Peacock Spit was an area of sand shoals covered by water at all times extending into the Columbia River and Pacific Ocean from Cape Disappointment. Since the construction of North Jetty, the Spit had built up so that in 1925 it was an area never covered by the tides and the same was connected with the uplands of the Fort Canby reservation by sand spits extending along North Jetty.

The Attorney General of the United States rendered his opinion on August 28, 1925, to the Secretary of War concerning said accretions to Fort Canby Military Reservation (34 Opin. Atty. Gen. U. S. 531). In said opinion the Attorney General considered said Act of March 20, 1890. He also considered and quoted in full the provisions of Article XVII, Section 1 of the Constitution of the State of Washington, set forth in Paragraph D-II-(I)-2 hereof. Said opinion then stated:

> "Upon the admission of the State of Washington into the Union, *the title to all tidelands within the limits of the State became vested in the State as trustee for all the people of the State,* except such tidelands as may have been granted away or specifically reserved to itself, if any, by the United States. (Op. March 20, 1925, and cases there cited.)

"No such reservation was made of the tidelands adjoining Fort Canby Military Reservation, and *the title thereto passed to the State*, subject to alienation by it. (Act March 19, 1907; Sess. L. 1907, p. 738; Sec. 6404, Pierce's Code, 1919)."

The Opinion of the Attorney General of August 28, 1925, then states with respect to said Act of March 20, 1890:

"Applying the above rule to the construction of the Act of March 20, 1890, the title indicates the intent of the Legislature of the State of Washington to grant to the United States for *public purposes* only the use of the tidelands adjoining and bordering on military reservations.

"That this was the intent of the legislature is indicated by the language of section 1 of the Act which provides that the grant shall continue so long as the upland adjoining such tidelands shall continue to be held by the Government of the United States 'for any of the *public purposes* above mentioned.'

"It must be conceded that commercial fishing in the waters of the Columbia River is not a *public purpose* within the meaning of the Act. The public purpose referred to in the Act is the purpose for which the upland has been reserved by the Federal Government, and while the use for public purposes granted to the United States is paramount, any other use which in no wise interferes with the use granted is reserved to the State. That the taking of fish from the waters of the Columbia River, including the tidewaters, does not interfere with the military use of the tidelands granted by the Act of March 20, 1890, is shown by the fact that the military authorities at Fort Canby have leased the fishing privilege in such tidewaters.

"This view apparently is the one taken by a subsequent legislature of the State of Washington when it enacted the Act of March 13, 1909, reserving to the people of the State of Washington the right to take food fishes from the waters covering said tidelands, so long as such fishing did not interfere with the *public use* of them by the United States.

"I have the honor to advise you, therefore (1) that so much of Peacock Spit as is now above high-water mark belongs to the United States, and is a part of the Fort Canby military reservation, and is subject to the same jurisdiction as is the original area of such reservation; and (2) that the Act of March 20, 1890, *supra, did not confer upon the United States an unlimited use of the tidelands belonging to the State of Washington,* but conferred only the use of such tidelands for the public purposes specified in the Act. Holding this view of the intendment of the Act of March 20, 1890, I find no occasion to modify or change my opinion of March 20, 1925."

4. By act of the Legislature of the State of Washington, approved March 18, 1919 (1919 Laws of Washington, page 459) the State of Washington thereby granted to the United States the right to use for naval purposes tide and submerged lands in front of the City of Bremerton, State of Washington. Said Act of March 18, 1919, reads in part as follows:

"Section 1. There is hereby granted to the United States of America the right to use for naval purposes the following described harbor area in front of the city of Bremerton, to-wit:

All harbor area belonging to the State of Washington and lying westerly of the line between Lots 8 and 9, Block 1 of the Town of Bremerton produced

southeasterly to and across the harbor area to the outer harbor line, as shown on the official maps of Bremerton Tide Lands filed in the office of the Commissioner of Public Lands at Olympia, Washington, February 28, 1913; it being the intention to include in the above description all of the harbor area embraced within the area designated as Parcel 1 of Tract No. 2 in the proclamation of the President of the United States relating to title to and possession of land for naval purposes dated November 4, A. D. 1918.

Sec. 2. Whenever the lands designated in the said presidential proclamation as Parcel 1 of Tract No. 2 (including the harbor area described in section 1 of this act) shall cease to be held and used for naval purposes, the right to use the said harbor area belonging to the State of Washington shall be terminated thereby, and the title shall revert to the State of Washington."

5. By Act of the Legislature of the State of Washington, approved March 14, 1913 (1913 Laws of Washington, Chapter 68, page 240), the State of Washington authorized the Commissioner of Public Lands to convey to the United States, upon request of the Secretary of the Navy, title in and to tide and submerged lands fronting on sections 1, 12 and 13, Township 25 North, Range 1 East, W. M., situated on the west shore of Puget Sound in Kitsap County between Keyport and Brownsville. The Secretary of the Navy made written request for conveyance of said tide and submerged lands by the State of Washington pursuant to said Act. Such conveyance was made to the United States by deed dated September 29, 1913, recorded in Vol. 12, page 302 of Tideland Deeds.

6. By Act of the Legislature of the State of Washington approved March 21, 1927 (1927 Laws of Washington, pages 550-552) the State of Washington thereby granted to the United States the tide and submerged lands out to a depth of four fathoms of water at ordinary low tide adjoining and bordering on any United States reservation. Said grant is contained in Section 150 of Chapter 255 of 1927 laws of Washington. Said Section 150 reads as follows:

"Sec. 150. The use of any tide and shore lands belonging to the state, and adjoining and bordering on any tract, piece or parcel of land, which may have been reserved or acquired, or which may hereafter be reserved or acquired, by the government of the United States, for the purpose of erecting and maintaining thereon forts, magazines, arsenals, dock yards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, be and the same is hereby granted to the United States, so long as the upland adjoining such tide or shore lands shall continue to be held by the government of the United States for any of the public purposes above mentioned: *Provided,* That this grant shall not extend to or include any lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using said lands for the taking of food fishes so long as such fishing does not interfere with the public use of them by the United States.

Sec. 151. Whenever application is made to the commissioner of public lands by any department of the United States government for the use of any tide or shore lands belonging to the state and adjoining and bordering on any upland held by the United

States for any of the purposes mentioned in the preceding section, upon proof being made to said commissioner of public lands that such uplands are so held by the United States for such purposes, he shall cause such fact to be entered in the records of his office and shall certify such fact to the governor and who shall execute a deed, in the name of the state attested by the secretary of state, conveying the use of such lands, for said purposes, to the United States, so long as it shall continue to hold for said public purposes the uplands adjoining said tide and shore lands."

6. By Sections 152 and 153 of said Chapter 255 of the Act of the Legislature of the State of Washington approved March 21, 1927, as aforesaid the State of Washington authorized the State Commissioner of Public Lands, whenever application is made by any department of the United States government, to reserve the tide and shore lands belonging to the State of Washington for any public purpose and so long as required by the United States for such public purpose. Said section 152 and section 153 read as follows:

"Sec. 152. Whenever application is made to the commissioner of public lands, by any department of the United States government, for the use of any tide or shore lands belonging to the state for any public purpose, and said commissioner shall be satisfied that the United States requires or may require the use of such tide or shore lands for such public purpose, said commissioner may reserve such tide or shore lands from public sale and grant the use of them to the United States, so long as it may require the use of them for such public purposes; and the commissioner of public lands shall certify such fact to the governor, who shall thereupon execute an ease-

ment to the United States, which shall be attested by the secretary of state, granting the use of such tide or shore lands to the United States, so long as it shall require the use of them for said public purpose.

Sec. 153. Whenever the United States shall cease to hold and use any uplands for the use and purpose mentioned in section 150 of this act or shall cease to use any tide or shore lands for the purpose mentioned in section 152 of this act, the grant or easement of such tide or shore lands shall revert to the state without resort to any court or tribunal."

7. In the same Act of the Legislature of the State of Washington approved March 21, 1927, by which the State of Washington granted to the United States the tide and submerged lands mentioned in the last two preceding subparagraphs, the State of Washington thereby asserted its ownership and dominion over all the submerged lands within the exterior boundaries of said state. Said Chapter 255 of the Act of the Legislature of the State of Washington contains numerous other provisions whereby the State of Washington asserted its ownership and dominion of all tide and submerged lands located within its exterior boundaries and exercised its ownership thereof by providing for the making of grants, leases and other conveyances of portions thereof.

(a) Said Chapter 255 is entitled:

"AN ACT relating to the selection, control, management, sale, lease and disposition of lands and areas belonging to or held in trust by the state, defining the powers and duties of certain officers in relation thereto, providing for appeals, prohibiting certain acts in relation there-

to and providing penalties for violation thereof."

By Section 1 of said act the legislature enacted that

> "Public lands of the State of Washington are lands belonging to or held in trust by the state, . . . and include . . . tide lands, shore lands, and harbor areas, as hereinafter defined, and the beds of navigable waters belonging to the state."

(b) Section 5 thereof defines the term "first class tide lands," as used in said Chapter 255, to mean the beds and shores of navigable tidal waters belonging to the State lying within or in front of the corporate limits of any city or within one mile thereof on either side of any city and between the line of ordinary high tide and the inner harbor line, and within two miles of the corporate limits on either side thereof and between the line of ordinary high tide and the line of extreme low tide.

Section 6 of said Act defines the terms "second class tide lands," the term "first class shore lands," and "second class shore lands" as used in said Act.

(c) Sections 107-117 of said Chapter 255 set forth a detailed procedure for platting, recording, selling, or leasing the state's first class tide and shore lands. Section 120 of said chapter provides for disposal of all other tide lands and further provides that:

> "All tide lands, other than first class, shall be offered for sale and sold in the same manner as state lands . . ."

(d) Section 121-122 provide procedure for the sale of tide and shore lands of the second class.

(e) By Section 142 of said Chapter 255 the Legislature of the State of Washington declared and legislated that the beds of all navigable tidal waters of the state lying below extreme low tide not covered by natural oyster beds and not in front of any incorporated city or town nor within two miles thereof shall be subject to lease by any citizen of the United states or corporation thereof for the purpose of planting and cultivating thereon artificial oyster beds for a period not to exceed 20 years and quantities not to exceed 40 acres. Said section 142 provides:

> "The beds of all navigable tidal waters in this state lying below extreme low tide, not covered by natural oyster beds, and not in front of any incorporated city or town, nor within two miles on either side thereof, shall be subject to lease for the purpose of planting and cultivating thereon artificial oyster beds, for periods not to exceed twenty years and in quantities not to exceed forty acres to any one person or corporation."

Subsequent sections of said Chapter 255 of the 1927 Laws of Washington set forth in detail the procedure for leasing submerged lands for the purpose of planting and cultivating artificial oyster beds.

(f) By said Chapter 255 of said Act of the Legislature of the State of Washington approved March 21, 1927, the Legislature asserted its ownership and dominion over all submerged lands within the exterior boundaries of said state. By Section 138 of said Act the Legislature authorized the Commissioner of Public Lands to grant to any person owning oyster lands abutting upon any such oyster reserva-

tion any parcel of tidelands lying between said oyster lands and the adjoining shore not exceeding three acres.

(g) Sections 140-185 of said Chapter 255 authorize the Commissioner of Public Lands to sell, at an appraised value, the reserved and reversionary rights of the State of Washington in any tidelands sold under the provisions of Laws of Washington 1895, Chapters XXIV and XXV, or under Laws of the State of Washington 1919, Chapter 168, or the provisions of Section 138 of said Chapter 255.

(h) Sections 175-185 of said Chapter 255, of 1927 Laws of the State of Washington, authorize the Commissioner of Public Lands to lease, and set forth detailed provisions for the leasing, for the purpose of

> "extracting petroleum or natural gas from any state, tide or shore lands or the beds of navigable waters, belonging to the state or which have been sold and the materials therein reserved by the state"

upon not to exceed 640 acres and for a term not exceeding 20 years nor for less than 15¢ per acre for the first year and 30¢ per acre for the second year, together with 10% of the gross value of petroleum and/or natural gas extracted therefrom, and subject to rules and regulations adopted by the Commissioner of Public Lands.

(IV)

The United States exercised its power of eminent domain by condemning certain tide and submerged lands owned by the State of Washington or by its grantees. Two of said condemnations are the following:

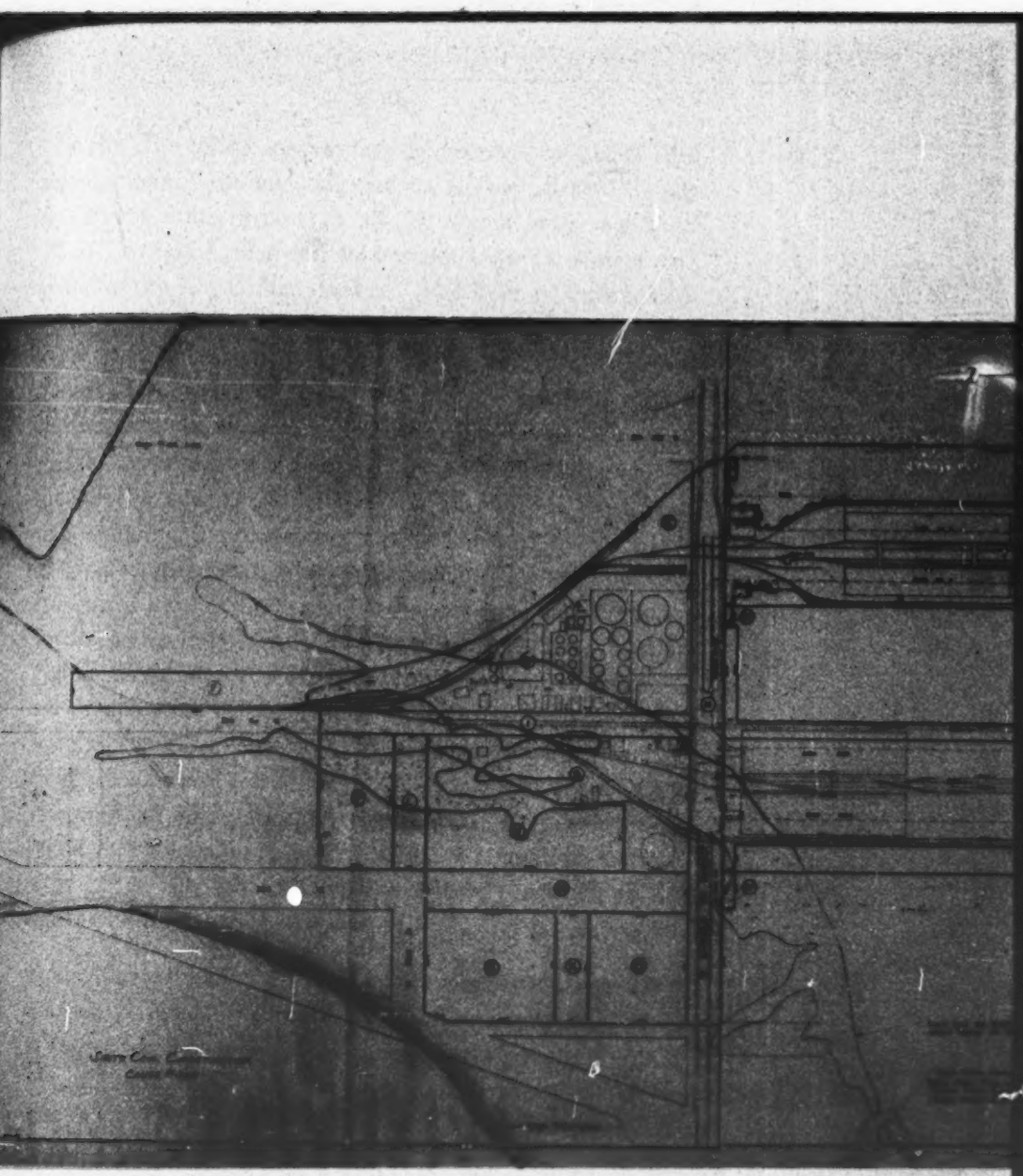
1. The United States filed a complaint in condemnation entitled "United States of America, Petitioner, vs. 76.207 Acres of Land, more or less, in King County, Washington, Port of Seattle, et al., Defendants," being Case No. 469-Civil on the files of the District Court of the United States for the Western District of Washington, Northern Division. A declaration of taking was signed by the Secretary of the Navy under date of January 31, 1942, and was filed in said action, declaring the taking of the lands was necessary for the immediate establishment of a naval supply base in the City of Seattle, Washington, and estimating the just compensation for all lands, improvements thereon and appurtenances thereto as being the sum of $4,146,929.97; and further declaring that

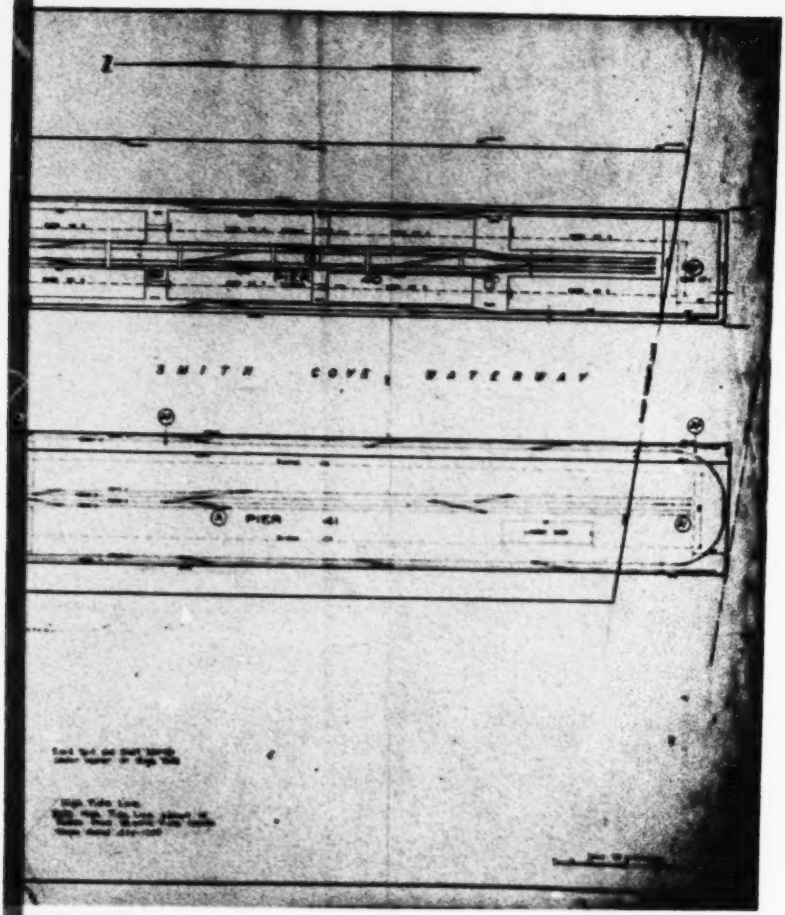
> "the use and occupancy by the United States of the shores and tidelands adjacent to the uplands hereinabove described and taken, are necessary in aid of navigation to accomplish the purpose for which said uplands are taken pursuant to the authority of Congress aforesaid, and use, possession and control of such shores and tide lands are hereby taken on behalf of the United States for such purposes."

The parcels described in the complaint and declaration of taking as Tracts A, B, C, D, E, F, G, and H, were on said date owned by the Port of Seattle, a municipal corporation. Said Port of Seattle was organized by the Legislature of the State of Washington (Laws of 1911, p. 412, as amended), granting to said Port power, among other things, to improve navigable waters of the State within the Port district and to exercise powers similar to those exercised by counties within said State.

The parcels therein described as A-1, A-2, A-3, and B-1 and B-2, were on said date owned by the State of Washington. Tracts A-1, A-3 and B-1 are situated between the inner and outer harbor lines in the Port of Seattle.

A photostatic copy of a map designated "Smith Cove Condemnation—Cause No. 469," depicting said tracts and also depicting the high tide line taken from the Seattle Tide Lines Map, 1894-1895, showing inner and outer harbor lines of the Smith Cove Waterway, is set forth as follows:




SMITH COVE WATERWAY
PIER 41

After the filing of the condemnation complaint and declaration of taking, all parties, by agreement, made settlement with respect to all the tracts lying north of West Garfield Street and said tracts were all bought and paid for by the United States. The case was ultimately tried in the United States District Court by a jury, with respect to all the tracts lying south of West Garfield Street. On April 6, 1944, the jury returned a verdict in the total sum of $3,650,399.85 and by answer to a special interrogatory found that said total verdict included the sum of $50,399.85 on account of land (but not including improvements thereon) owned by the State of Washington and taken by the United States in said condemnation proceedings. Judgment was rendered accordingly on said verdict and the judgment was paid in full by the United States, including a payment to the State of Washington in the sum of $50,399.85. As indicated on the chart of "Smith Cove Condemnation" all lands involved therein were below the line of ordinary high tide and all said lands were originally fully submerged lands. Prior to the filing of said condemnation suit the Port of Seattle had reclaimed and filled Tracts G, H, K, and M and portions of Tracts C, D, E and I.

2. The United States filed a condemnation complaint entitled "United States of America, Petitioner, vs. 10.9120 acres of land, more or less, in Seattle, King County, Washington, et al., Respondents," being Case No. 488 in the files of the United States District Court for the Western District of Washington, Northern Division, and filed therein a declaration of taking dated March 4, 1942, executed by the Secetary of the Navy, declaring the necessity for the taking for public use in the establishment of

shipyard facilities and the expansion of the shipyard of Todd-Seattle Drydock, Inc. Said declaration, among other things, declared

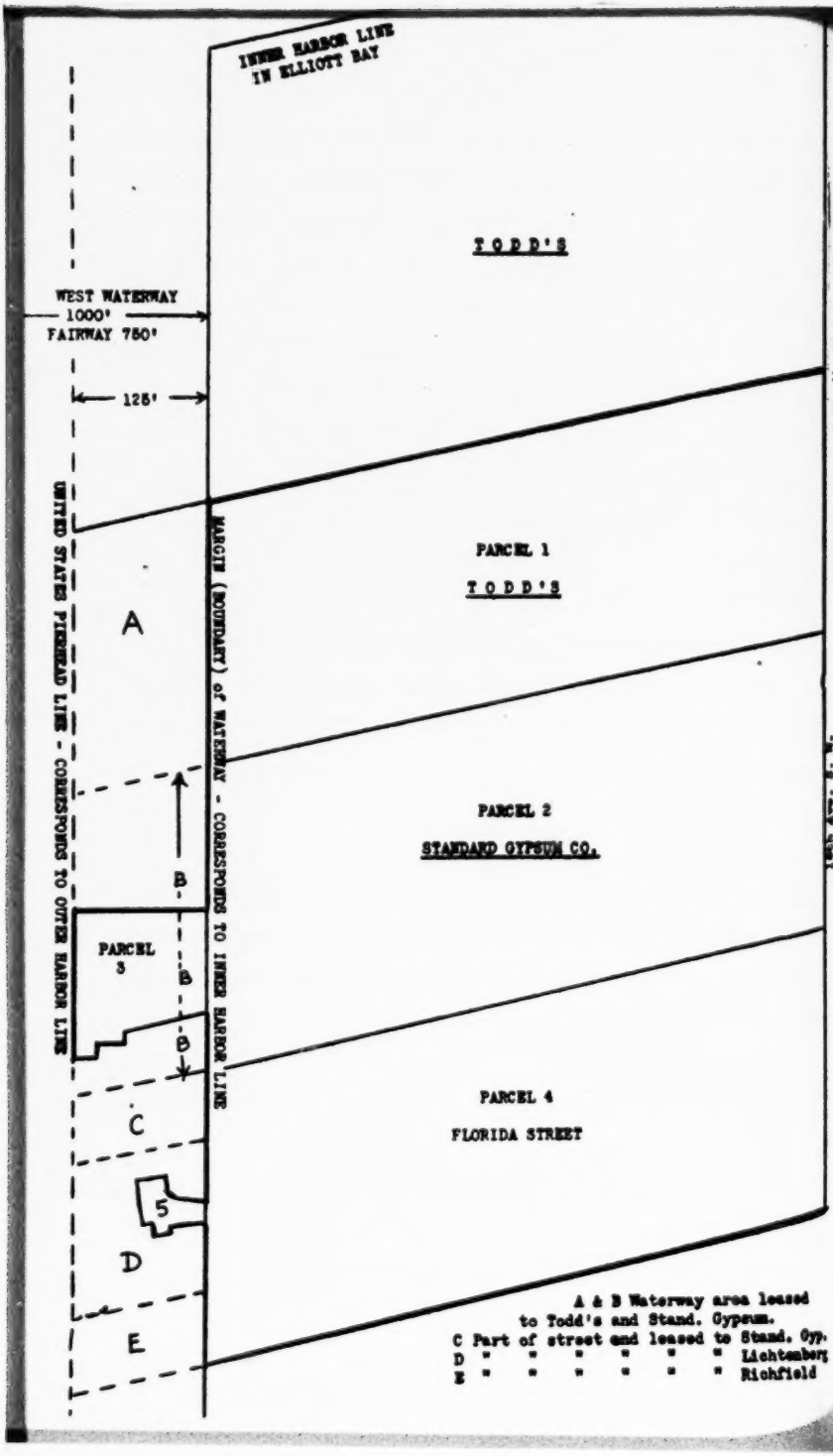
> "the use and occupancy by the United States of the shores and tide lands adjacent to the uplands, hereinbefore described and taken, are necessary in aid of navigation to accomplish the purposes for which said lands are taken, pursuant to the authority of Congress aforesaid, and use, possession and control of such shores and tide lands are hereby taken on behalf of the United States for such purposes."

The Port of Seattle was added as a party defendant to said cause by amended petition.

All the lands described in the complaint as Parcels 1 to 5, inclusive (known as the "West Waterway Condemnation") were originally fully submerged at ordinary high tide, lying at the south end of Seattle Harbor. In the year 1911 the Board of Harbor Line Commissioners of the State of Washington created two public waterways across the existing tide and submerged lands at the south end of Seattle Harbor and caused said waterways to be dredged. Said two waterways are known as the East Waterway and the West Waterway. The tide and submerged lands adjoining these waterways were filled in by artificial means and blocks, lots and public streets were laid out thereon. Said filled in and reclaimed lands were sold by the State of Washington to various parties. On the filled lands thus created the Seattle industrial district has been constructed. At the time of the creation of

the East Waterway and of the West Waterway the United States adopted the State of Washington's pierhead lines, leaving a strip of 250 feet remaining on each side of the waterway between the pierhead line and the margin or boundary of the waterway. These pierhead lines were subsequently moved inshore, with 125 feet remaining on either side of the waterway between the pierhead lines and the boundary of the waterway. By an Act of the Legislature of the State of Washington (Remington Rev. Stats. 8017) the Port of Seattle is authorized, on behalf of the State, to grant the right to build docks and other facilities on this 125 foot strip. Where the area lies between the prolongation of the lines of a street (such as Parcel 5 set forth in the complaint and declaration of taking) the Port of Seattle has the use and control thereof.

A chart entitled "West Waterway Condemnation—Case No. 488" showing Parcels 1 to 5, inclusive, as described in the complaint and declaration of taking filed in said cause No. 488 is set forth as follows:


INNER HARBOR LINE
IN ELLIOTT BAY
TODD'S
WEST WATERWAY
1000'
FAIRWAY 750'
125'
UNITED STATES PIERHEAD LINE - CORRESPONDS TO OUTER HARBOR LINE
MARGIN (BOUNDARY) of WATERWAY - CORRESPONDS TO INNER HARBOR LINE
PARCEL 1
TODD'S
PARCEL 2
STANDARD GYPSUM CO.
PARCEL 4
FLORIDA STREET
PARCEL 3
A
B
B
B
C
5
D
E
A & B Waterway area leased
to Todd's and Stand. Gypsum.
C Part of street and leased to Stand. Gyp.
D " " " " " " Lichtenberg
E " " " " " " Richfield

CAUSE #488

The West Waterway Condemnation suit was settled by all parties whereby the United States limited its condemnation, so far as Parcels 3 and 5 were concerned, to the taking of the dock structures located thereon, leaving the fee title to the underlying lands in the owners thereof. By said settlement the State of Washington and the Port of Seattle agreed not to charge the United States any rental for the use of Parcels 3 and 5 but the owners were paid for the dock structures thereon thus taken and condemned.

(V)

The Department of the Interior, the Secretary thereof, the Commissioner of the General Land Office and the War Department have ruled and reported that the State of Washington is the owner of the title of all tide and submerged lands within its boundaries.

1. On September 21, 1891, the Secretary of the Interior affirmed a decision of the Commissioner of the General Land Office rejecting an application of James Kasson to locate a Certificate of Location under the Act of Congress of April 5, 1872, commonly known as "Valentine Scrip," upon certain tide and submerged lands within the boundaries of the State of Washington. In his decision and ruling thereon the Secretary stated in part (13 L. D. 299) as follows:

> "On the admission of a State to the Union it acquires by virtue of its inherent sovereignty absolute title to all tide lands in its borders to the exclusion of any rights under pending unadjusted scrip locations for such lands. Frank Burns, 10 L. D. 365."

2. On June 12, 1895, the Secretary of the Interior affirmed a decision of the Commissioner of the General Land Office rejecting the application of Louis Langie to locate Sioux Half-Breed scrip Nos. 356C and 356D on described tide and submerged lands in Puget Sound, State of Washington. In his opinion of rejection the Secretary stated (20 L. D. 530) in part as follows:

> "It is admitted that the land in question is tide land over which the tide waters of Puget Sound ebb and flow.
>
> "By the act of February 22, 1889 (25 Stat. 676), the people of Washington territory were enabled to form a constitution and State government, and to be admitted into the Union on an equal footing with the original states. In accordance with said act the people, on July 4, 1889, in convention assembled formed the constitution and State government, and on November 11, 1889, the President, by proclamation, declared the admission of the State of Washington into the Union to be completed.
>
> * * * * * * * *
>
> "It must therefore be held that while the location is permissible upon unsurveyed lands, yet until the filing of the plat of the government survey, the claim initiated is an unadjusted one, and, as the government surveys are not extended over tide-water lands, the rights acquired by the location of Sioux half-breed scrip upon unsurveyed tide water lands is not sufficient to defeat the title of the State, acquired by virtue of its inherent sovereignty upon its admission into the Union, over the land within its limits, below ordinary high water mark.

"In the case of Knight v. United States Land Association (142 U. S. 183), the court holds as follows:

> 'It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess within their respective borders. Martin v. Waddell, 16 Pet. 367, 410; Pollard v. Hagan, 3 How. 212, 229; Goodtitle v. Kibbe, 9 How. 471, 478; Mumford v. Wardwell, 6 Wall. 432, 436; Weber v. Harbor Commissioners, 18 Wall. 57, 65. Upon the acquisition of the territory from Mexico the United States acquired the title to tide lands equally with the title to upland; but with respect to the former they held it only in trust for the future States that might be erected out of such territory. Authorities cited. But this doctrine does not apply to lands that had previously been granted to other parties by the former government, or subjected to trusts which would require their disposition in some other way. San Francisco v. LeRoy, 138 U. S. 656.'

"As the land in question is not incumbered by the terms of exceptance stated in the opinion of the court, it is clear that the same is not subject to disposition under the legislation embodied in the act of 1854, under which the scrip in question was issued."

3. The Secretary of the Interior on March 27, 1890, affirmed a ruling of the Commissioner of the General Land Office rejecting the application of Frank Burns.

Jr. to locate a Certificate of Location under the Act of Congress of April 5, 1872, commonly known as "Valentine Scrip," upon described portions of tide and submerged lands near Seattle in the then Territory of Washington. In his decision the Secretary of the Interior stated in part (10 L. D. 365) as follows:

> "In view of the important interests involved, I directed that the record in the case be certified to me that a hearing may be had upon the legal questions involved in said case, to wit: whether said lands are subject to location as public lands of the United States, leaving all questions as to the respective rights of the several claimants to be disposed of hereafter, if it should be determined that said lands were public lands, subject to location and entry.
>
> "It is admitted that the lands embraced in this application are a portion of the shore of Duwamish Bay, an arm of Puget Sound, over which the tide daily ebbs and flows; that they are below high water mark, and above low water mark, and denominated by the Coast and Geodetic Survey as 'Mud flats, bare at low water they have never been surveyed and are beyond the meander line of the official surveys made by the United States of lands bordering on said shore.'
>
> "Your office held that all of the lands within the territories of the United States, including lands on the shores between high and low water mark over which the tide daily ebbs and flows, belong to the United States, as proprietor, and are subject to its jurisdiction as sovereign; that, until the admission of a Territory as a State in the Union, the general government may, by virtue of such proprietary interest, grant or otherwise dispose of the title to the soil of tide waters as other public lands, subject only

to the conditions and restrictions that govern a State in the disposal of such lands, after they have come within the jurisdiction and control of the State as sovereign.

"The protestants contend that, while the legal title to all lands in the Territory, including lands known as tide lands, is in the United States and subject to its jurisdiction as sovereign, it holds such lands are not subject to disposal by general government, but must be held for the use and benefit of the future State, and this question has been thoroughly argued orally and in briefs of counsel on both sides.

"It is, however, unnecessary for the disposition of this case to decide the question whether these lands were subject to be granted or otherwise disposed of by the general government prior to the admission of Washington Territory into the Union as a State. It may be conceded, for the sake of argument, that until the Territory was admitted as a State and invested with the jurisdiction of sovereignty over these lands, the United States, by virtue of its sovereignty and proprietary interest could have granted or otherwise disposed of them; but no such grant has been made, and the government has not pretended nor attempted to dispose of the specific lands claimed by the applicant. All that the applicant claims is, that they were public lands of the United States, subject to location by Valentine scrip at the date of his application.

"The Act of Congress of April 5, 1872 (17 Stat., 640), authorized and required the circuit court of the United States for California to hear and decide upon the merits of the claim of Thomas B. Valentine, claiming title under a Mexican grant to Juan Miranda; but, as the lands embraced within the limits of the grant had been disposed of by the United

States as public lands, and the proceeds covered into the Treasury, it was provided that:

* * * * * * * *

"The scrip issued under authority of this act can be located on any unoccupied, unappropriated 'public lands' of the United States, whether surveyed or unsurveyed. The question therefore arises: were these lands 'public lands' of the United States of the character contemplated by Congress in the act of April 3, 1872, authorizing the issuance of this scrip? The words 'public lands' of the United States are used to designate such lands as are subject to the sale and disposal under the general land laws, and do not include all lands to which the United States may have the legal title, or all lands that may be granted or disposed of by the United States. These words have a well defined meaning and all grants of 'public lands' are made by the government and accepted by the grantee with a full knowledge of what lands are intended to be thereby conveyed.

"In the case of Newhall v. Sanger (92 U. S., 761), the supreme court say: 'The words "public lands" are habitually usd in our legislation to describe such as are subject to sale or other disposal under general laws.'

* * * * * * * *

"It has never been questioned that a State upon its admission into the Union immediately acquires title to and jurisdiction over all lands within its limits below ordinary high water mark. This title and control is not acquired by mere assertion of right and ownership, but by virtue of its sovereignty. There

was no cession of these lands to the State, and none was necessary.

> 'It properly belongs to the States by virtue of their inherent sovereignty, and the United States has wisely abstained from extending (if it could extend) its surveys and grants beyond the limits of high water.' Barney v. Keokuk (94 U. S. 338.)

"Therefore, when the court says that upon the admission of new States the government reserved to itself by solemn compact the sole right to dispose of all the *public lands* within the limits of the State, it is evident that the words 'public lands' only referred to lands subject to disposal under the general land laws, and did not include the lands betwen high and low water mark. If these lands are included in the term 'public lands,' the government would have the right to dispose of them by the terms of the compact, because no 'public lands' are excepted from the operation of it.

"Upon the admission of a new State into the Union it becomes entitled to all the rights of sovereignty and jurisdiction as to the soil of navigable waters as the older States,

> 'and neither the right of the United States to the Public lands, nor the power conferred upon Congress to make laws and regulations for the sale thereof, enables the general government to grant the shores and bed of such waters within the limits of a new State after its admission into the Union.' Gould on Law of Waters, p. 90.

"In Pollard v. Hagan, 3 How., 212, the court say, that—

> 'When Alabama was admitted into the Union on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States . . . Nothing remained to the United States, according to the terms of the agreement, but the public lands.' (Page 223.)

"It is evident that the court did not consider that 'public lands' embraced 'tide lands,' because the latter class of lands were subject to the jurisdiction and control of the State, while the right to dispose of 'the public lands' was left to the general government. The general conclusions arrived at by the court, are—

> 'First: The shores of navigable waters, and the soils under them, were not granted by the constitution to the United States, but were reserved to the States respectively.
>
> 'Secondly. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.
>
> 'Thirdly. The right of the United States to the public lands and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case.'

"The same principle is announced and the same distinction drawn between 'public lands of the United States' and lands which the State acquired upon her admission by virtue of her sovereignty, in the several decisions of the supreme court upon this question, from the earlier decision in the case of Mobile v. Eslava (16 Peters, 234) to the case of Barney v. Keokuk, 94 U. S. 338.

"In the enabling act of February 22, 1889 (25 Stat., 676) the Territory of Washington was required, as a condition of its admission into the Union, 'to forever disclaim all right and title to the public lands lying within its boundaries.' This disclaimer is made in the Constitution of the State of Washington, Art. 26, Sec. 2, which also declares that the public lands shall be and remain subject to the disposition of the United States; but, by article 17 of said Constitution it 'asserts ownership to the beds and shores of all navigable waters in the State up to and including the line of ordinary high tide in waters where the tide ebbs and flows.'

"As before stated, the assertion of ownership in the Constitution of the State did not confer upon it the title to the tide lands. It acquired the title by virtue of its sovereignty. If it did not, the assertion of ownership in the absence of a grant or cession by the United States did not divert the United States of the title, and the disclaimer by the State of all right and title to the public lands conferred upon the United States the right to dispose of the tide lands, if they are 'public lands' within the meaning of the act.

* * * * * * * *

"The admission of Washington as a State in the Union has all the force and effect of an absolute grant

of Congress, and, therefore, having acquired absolute title to the lands in controversy by virtue of her inherent sovereignty, prior to the vesting of any right in the locators, the rights of the State are superior to those of the applicant, even if it be conceded that the lands in dispute were at the date of location subject to disposal by the general government as public lands of the United States.

"The decision of your office is reversed, and the location allowed for the land in controversy will be canceled."

4. In the year 1938 the Board of Engineers for Rivers and Harbors of the United States War Department and the United States Maritime Commission prepared and published a written report entitled "THE PORT OF SEATTLE, WASHINGTON." Said Report was prepared pursuant to the requirement of the Act of Congress known as The Transportation Act of 1920, Section 500. Said Report stated, with respect to the ownership of the Seattle Harbor, in part, as follows:

"OWNERSHIP OF WATER FRONT.

"In its constitution, the State of Washington asserts its ownership to the beds and shores of all navigable waters in the State up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes. The constitution provides for the location and establishment of harbor lines in navigable waters wherever such waters lie within or in front of the corporate limits of any city, or within 1 mile thereof upon either side. Harbor areas are also provided for by the location and establishment

of an inner harbor line which shall be not less than 50 nor more than 2,000 feet shoreward of the outer harbor line. Where no inner harbor line is established, the area between the outer harbor line and the line of ordinary high water constitutes the harbor area. Harbor areas can never be sold or granted by the State nor can State control over them be relinquished. They may be leased, however, for terms not to exceed 30 years. The owners of uplands or tidelands abutting the harbor area have certain preferential rights to obtain such leases. The lands lying between the inner harbor line and the line of ordinary high water are defined by legislative act as first-class tidelands and may be sold or leased, the abutting upland owner having preferential rights to purchase. If these preferential rights are not exercised by the abutting owner, such harbor area may be leased or first-class tidelands may be sold or leased to others.

"Nearly all upland owners in Seattle have purchased the first-class tidelands and have leased the harbor areas in front of their property.

"The port commission owns the lands occupied by its terminals except the harbor area. It also owns a tract known as Canal Waterway, 300 feet wide, between Horton and Hinds Streets, and 1 mile in length, extending from East Marginal Way to Ninth Avenue South. This tract is being developed as an industrial section. The commission has also acquired about 30 acres of land located in the southern part of the central water front for additional terminal development, to be known as unit No. 15.

"A limited area of tidal water front in Elliott Bay and Lake Union is owned by the city of Seattle, and on Lakes Union and Washington and on the Duwamish Waterway by King County."

(VI)

The Supreme Court of the United States has decided that the State of Washington is the owner of all the lands under navigable waters within the boundaries of said state.

1. In *Port of Seattle v. Oregon & Washington R. Co.* (1921), 255 U. S. 56, 63, Mr. Justice Brandeis, for a unanimous court, declared that:

> "First: The right of the United States in the navigable waters within the several states is limited to the control thereof for purposes of navigation. Subject to that right Washington became, upon its organization as a state, *the owner of the navigable waters within its boundaries and of the land under the same.* Weber v. State Harbor Comrs., 18 Wall. 57, 21 L. ed. 798. By §1 of article 17 of its Constitution the state asserted its ownership in the bed and shore 'up to and including the line of ordinary high tide in waters where the tide ebbs and flows.' The extent of the state's ownership of the land is more accurately defined by the decisions of the highest court, as being the land below high-water mark, or the meander line, whichever of these lines is the lower. The character of the state's ownership in the land and in the waters is the full proprietary right. The state, being the absolute owner of the tidelands and of the waters over them, is free, in conveying tidelands, either to grant with them rights in the adjoining water area, or to completely withhold all such rights."

2. *Mann v. Tacoma Land Company* (1894), 153 U. S. 273, affirmed a judgment sustaining a demurrer to plaintiff's bill seeking to restrain defendant from trespassing upon three tracts of tide and submerged lands lying in Commencement Bay, Puget Sound, State of Washington. Plaintiff claimed to be the owner thereof by his filing three Certificates of Location issued under the Act of Congress of April 5, 1872, commonly known as the "Valentine Scrip Act." Under said Act, Congress authorized the filing of such Certificates of Location on 40 acre tracts "of unoccupied and unappropriated public lands of the United States, not mineral." The sole question in the case related to plaintiff's title to these tide and submerged lands resulting from his filing with the General Land Office of such Valentine Scrip Certificates of Location. In a unanimous decision written by Mr. Justice Brewer, it is stated in part (p. 283):

> "That the title to tide lands is in the State is a proposition which has been again and again affirmed by this court, * * *."

This Honorable Court then further stated (p. 284):

> "Indeed, in the Constitution of Washington (Art. 17, sec. 1), there is an expressed assertion of the title of the State to the tide lands within its borders."

III.

State of Oregon.

1. On November 9, 1857, the people of the State of Oregon adopted a Constitution. By Article XVI of the said Constitution, the boundaries of the State of Oregon are established as:

> "Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship-channel of the Columbia River; thence easterly to and up the middle channel of said river * * *."

By Act of Congress approved February 14, 1859, the State of Oregon was admitted into the Union "on an equal footing with the other States in all respects whatever."

By said Act of Admission, Congress thereby specifically established the boundary of the State of Oregon as follows:

> "In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bound as follows, to wit: Beginning one marine league at sea due west from the point where the forty-second parallel or north latitude intersects the same; thence northerly at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship-channel of the Columbia River; thence easterly, to and up the middle channel of said river, * * *."

The Legislature of the State of Oregon has fixed the westerly boundaries of all counties bordering on the Pacific Ocean as extending to the boundary of the State by providing (1917 Laws of Oregon, Chapter 277, page 517; II Laws (1920) Title 22, Chapter 1, Section 2638) that:

> "The boundaries of all counties bordering on the Pacific Ocean shall be and are hereby declared to extend to the western boundary of the State as defined in the Constitution of the State * * *."

2. On October 28, 1872 (1872 Laws of Oregon, p. 129), amended October 26, 1874 (1874 Laws of Oregon, p. 76), and again amended in 1876 (1876 Laws of Oregon, p. 69) the Legislature of the State of Oregon enacted:

> "That the owner or owners of any land abutting or fronting upon or bounded by the shore of the Pacific Ocean or of any bay, harbor or inlet of the same, and rivers and their bays, in which the tide ebbs and flows, within this state shall have the right to purchase from the state all the tide land belonging to the state in front of such owner or owners."

This Honorable Court has passed upon the effect and meaning of said statute, as hereinafter set forth.

3. This Honorable Court has held that the State of Oregon is the owner of all tide and submerged lands within its boundaries.

(a) In *Shively v. Bowlby* (1894), 152 U. S. 1, this Court held that under said Act of October 28, 1872, quoted above, the conveyance to Bowlby by the State of Oregon covering tide lands in the Columbia River prevailed

over a claim of title asserted by Shively under a deed from the United States to the same tide lands. Said controversy appeared to this court

> "to be fitting occasion for a full review of those decisions and a consideration of other authorities"

upon the subject

> "of public and private rights in lands below high water mark in navigable waters."

After a lengthy review of the decisions of this Court, Mr. Justice Gray, in rendering a unanimous judgment, stated in part (p. 49) that:

> "The title to the shore and lands under tide water, said Mr. Justice Bradley (in Smith v. Maryland, 18 How. 71, 74), 'is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery.' * * * And the Territories acquired by Congress, whether by deed of cession from the original States, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the Union as States, upon an equal footing with the original States in all respects; and the title and dominion of the *tide waters* and the lands under them are held by the United States for the benefit of the whole people, and, as this court has often said, in cases above cited, 'in trust for the future States.' Pollard v. Hagan, 3 How. 212, 221, 222; Weber v. Harbor Commissioners, 18 Wall. 57, 65; Knight v. United States Land Association, 142 U. S. 161, 183.
>
> "The Congress of the United States, in disposing of the public lands, has constantly acted upon the theory that those lands, whether in the interior, or on the coast, above high water mark, may be taken

up by actual occupants, in order to encourage the settlement of the country; *but that the navigable waters* and the *soils* under them, *whether within or above the ebb and* flow of the tide, shall be and remain public highways; and, being chiefly valuable for the public purposes of commerce, navigation and fishery, and for the improvements necessary to secure and promote those purposes, shall not be granted away during the period of territorial government; but, unless in case of *some international duty or public exigency, shall be held by the United States in trust for the future States, and shall vest in the several States, when organized and admitted into the Union, with all the powers and prerogatives appertaining to the older States in regard to such waters and soils within their respective jurisdictions;* in short, shall not be disposed of piecemeal to individuals as private property, but shall be held as a whole for the purpose of being ultimately administered and dealt with for the public benefit by the State, after it shall have become a completely organized community."

This Court then stated, with respect to the title of the State of Oregon, that (pages 52-53-54):

"The defendants in error claim title to the lands in controversy by deeds executed in behalf of the State of Oregon, by a board of commissioners, pursuant to a *statute of the State of 1872, as amended by a statute of 1874, which recited that the annual encroachments of the sea upon the land,* washing away the shores and shoaling harbors, could be prevented only at great expense *by occupying and placing improvements upon the tide and overflowed lands belonging to the State,* and that it was desirable to offer facilities and encouragement to the owners of

the soil abutting on such harbors to make such improvements; and therefore enacted that the owner of any land abutting or fronting upon, or bounded by the shore of any tide waters, should have the right to purchase *the lands belonging to the State* in front thereof; and that, if he should not do so within three years from the date of the act, they should be open to purchase by any other person who was a citizen and resident of Oregon, after giving notice and opportunity to the owner of the adjoining upland to purchase; and made provisions for securing to persons who had actually made improvements upon tide lands a priority of right so to purchase them. * * *

"The theory and effect of these statutes were stated by the Supreme Court of the State, in this case, as follows: *'Upon the admission of the State into the Union, the tide lands became the property of the State,* and subject to its jurisdiction and disposal. In pursuance of this power, the State provided for the sale and disposal of its tide lands by the act of 1872 and the amendments of 1874 and 1876. * * * *These statutes are based on the idea that the State is the owner of the tide lands, and has the right to dispose of them;* that there are no rights of upland ownership to interfere with this power to dispose of them and convey private interests therein, except such as the State saw fit to give the adjacent owners, and to acknowledge in them and their grantees when they had dealt with such tide lands as private property, subject, of course, to the paramount right of navigation secured to the public. *These statutes have been largely acted upon, and many titles acquired under them to tide lands.* In the various questions relating to tide lands which have come before the judiciary, the validity of these statutes has been recognized and taken for granted, though not directly passed upon.' 22 Oregon, 415, 416."

This Court then stated its conclusions (p. 57) as follows:

"At common law, the title and the dominion in lands flowed *by the tide* were in the King for the benefit of the nation. Upon the settlement of the Colonies, like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution, these rights, charged with a like trust, *were vested in the original States within their respective borders,* subject to the rights surrendered by the Constitution to the United States.

"Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, *the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory.*

"The new States admitted into the Union since the adoption of the Constitution have *the same rights as the original States in the tide waters, and in the lands under them, within their respective jurisdictions.* The title and rights of riparian or littoral proprietors in the soil below high water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

"The United States, while they hold the country as a Territory, having all the powers both of national and of municipal government, may grant, for appropriate purposes, titles or rights in the soil below high water mark of tide waters. But they have never done so by general laws; and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the

people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters, and in the soil under them, to the control of the States, respectively, when organized and admitted into the Union.

"Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high water mark, and do not impair the title and dominion of the future State when created; but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the Constitution in the United States."

(b) In *United States v. Oregon* (1935), 295 U. S. 1, in a unanimous decision, Mr. Chief Justice Stone, in delivering the opinion, stated in part (page 6):

"That if the waters were navigable in fact, *title passed to the State upon her admission to the Union.*"

It is further there stated (page 14) that:

"For the reason, upon the admission of a State to the Union, *the title of the United States to lands underlying navigable waters within the State passes to it as incident to the transfer to the State of local sovereignty,* and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce."

4. The State of Oregon by Act of its Legislature approved on October 21, 1864, granted to the United States lands lying in the Pacific Ocean and mouth of the Colum-

bia River situated between high and low tide adjacent to Fort Stevens and Point Adams, Oregon. Said Act (Laws of Oregon, 1864-6, page 72) provides in part as follows:

> "SECTION 1. There is hereby granted to the United States, all right and interest of the state of Oregon, in and to the land in front of Fort Stevens, and Point Adams, situate in this state, and subject to overflow, between high and low tide, and also to Sand Island, situate at the mouth of the Columbia river in this state; the said island being subject to overflow between high and low tide."

5. The State of Oregon by Act of its Legislature of 1874 provided for the granting to the United States of lands covered by navigable waters within the limits of said State for sites for lighthouses, beacons or other aids to navigation. Said Act (1874 Laws of Oregon, p. 10) provides in part as follows:

> "SECTION 1. That whenever the United States desire to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a lighthouse, beacon or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same. *Provided,* No single tract shall contain more than ten (10) acres, . . ."

6. The Legislature of the State of Oregon has asserted the ownership of the State in and to the submerged lands lying in the Pacific Ocean within the boundaries of said State by authorizing the execution of leases covering portions thereof for purposes of harvesting kelp. (1917 Laws of Oregon, Chapter 276, page 516; 1920 Laws of Oregon, Title 32, Chapter 10, Section 5659, Volume II, page 2302.) Said Act authorized the State Land Board:

> "to lease, for the purpose of harvesting kelp and other seaweed, all that land lying off the Oregon coast between the low tide line *and three miles seaward therefrom* . . ."

7. By Act of the 1921 Legislature (Laws of Oregon 1921, Chapter 105, p. 156) the State of Oregon regulated the natural and artificial oyster beds situated in the waters of said State. Section 160 of said Act provides in part that:

> "The Fish Commission may grant permits to any person to transplant or plant Eastern or other oysters in any of the waters of the State of Oregon wherein are located natural oyster beds, and shall have authority to lease to said person the exclusive privilege of taking oysters from said natural oyster beds or any portion thereof for a period not to exceed 10 years."

By Sections 161 and 162 of said Act artificial plantations of oysters belonging to citizens of the State of Oregon, subject to regulations of the Commission, shall be deemed and protected as private property. Portions of Yaquina Bay and Netart's Bay are thereby designated as artificial or natural plantations of oysters and oyster beds.

IV.
State of Texas.

1. The State of Texas seceded from the Republic of Mexico by declaring its independence on March 2, 1836, and formed itself into an independent republic by framing and adopting a Constitution of the Republic of Texas on March 17, 1836.

2. By act of its Legislature on December 19, 1836, the Republic of Texas established its southerly boundaries as beginning:

> "At the mouth of the Sabine River and running west along the Gulf of Mexico 3 leagues from land to the mouth of the Rio Grande, thence up the principal stream of said river * * *." (I Houston Laws of Republic of Texas (1838) page 133; I Gammel's Laws of Texas (1898) 1193.)

3. By joint resolution approved March 1, 1845 (5 Stats. 797) the Congress of the United States consented:

> "That the territory properly included within and rightfully belonging to, the Republic of Texas may be erected into a new state to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic * * * with the consent of the existing government, in order that the same may be admitted as one of the States of this Union."

By said joint resolution Congress enacted that its consent was given upon certain conditions one of which was that the State of Texas, when admitted into the Union, shall retain all the public funds, debts, taxes and dues which may belong to or be due and owing said Republic,

> "And shall also retain all the vacant and unappropriated lands lying within its limits,"

to be applied to the payment of the debts and liabilities of the Republic of Texas, with the residue of said lands to be disposed of as said State may direct.

Said joint resolution approved March 1, 1845, provided that the State of Texas:

> "Shall be admitted into the Union, by virtue of this act, on an equal footing with the existing States, as soon as the terms and conditions of such admission and cession of the remaining Texan territory to the United States shall be agreed upon by the Governments of Texas and the United States; * * *."

The Congress of the Republic of Texas on July 4, 1845, adopted a joint resolution consenting that the people and territory of the Republic of Texas be created into a new State in order that it may be admitted as one of the States of the American Union, and assenting to and accepting the proposals, conditions and guarantees contained in the joint resolution of Congress of March 1, 1845.

By joint resolution approved December 29, 1845, the Congress of the United States admitted the State of Texas into the Union

> "On an equal footing with the original states in all respects whatever."

4. The United States has exercised its power of eminent domain by condemning certain portions of the submerged lands located within the boundaries of the State of Texas; and the United States has alleged in said proceedings that said submerged lands are owned by the State of Texas.

Some of said condemnation proceedings are the following:

(a) A condemnation proceeding was brought by the United States entitled *"United States of America v. Cer-*

tain parcels of land in Harris County, Texas; Federal Irrigation Co., et al.", being Civil No. 1917 in the United States District Court for the Southern District of Texas, Houston Division. A judgment on declaration of taking was entered in said proceeding on September 27, 1945, condemning an easement for a water pipeline under the Houston Ship Channel in Buffalo Bayou, Harris County, Texas.

(b) A condemnation proceeding was brought by the United States entitled *"United States of America v. Certain parcels of land in the County of Nueces, State of Texas, et al.",* being Civil No. 191 in the United States District Court for the Southern District of Texas, Corpus Christi Division. A Declaration of Taking and judgment thereon was entered in said proceeding on April 27, 1942, condemning an easement under Oso Bay, Texas, for a distance of 516 feet.

(c) A condemnation proceeding was brought by the United States entitled *"United States of America v. 5 parcels of land in Harris County, Texas; Houston Deep Water Land Company, et al.",* being Civil No. 892 in the United States District Court for the Southern District of Texas, Houston Division. A Declaration of Taking and judgment thereon was entered in said proceeding on October 21, 1944, condemning the fee simple title to 29.446 acres of the old bed of Buffalo Bayou, Harris County, Texas.

In each of said condemnation proceedings, it was alleged by the United States or determined by the court that the State of Texas or its grantee or successor was the owner of the lands therein sought to be taken in said condemnation proceedings respectively. For example, in the petition and declaration of taking filed by the United

States in said case Civil No. 892, it is alleged that the 29.446 acre parcel of former tide and submerged lands is owned by Harris County Houston Ship Channel Navigation District, a public corporation, to which said land was granted by Act of the Legislature of the State of Texas.

5. The State of Texas by Act of its Legislature approved April 18, 1907 (1905-07, Laws of Texas, p. 276) authorized, ratified and approved the conveyance to the United States by the Board of Commissioners of the City of Galveston, adopted February 14, 1907, conveying to the United States 978.63 acres of tide and submerged lands lying in Galveston Bay. Said Act of the Legislature recites, in the emergency clause, in part as follows:

> "Whereas, the expenditure by the United States government of a large amount of money in the improvement of the channel in Galveston Harbor is conditioned upon the ratification of the Act of the City of Galveston by the Legislature of the State of Texas; . . ."

Said Act of the Legislature then thereupon provided in part as follows:

> ". . . and the consent of the State of Texas is hereby given to the release, transfer and conveyance to the United States by the said board of all right, title, claim and interest of the City of Galveston"

in the described area of 978.63 acres of tide and submerged lands.

6. The State of Texas by Act of its Legislature approved April 23, 1907 (1905-07, Laws of Texas, p. 295) granted to the United States a tract of 100 acres of land situated on and around Mustang Island, Nueces County,

bordering on the Gulf of Mexico and extending therein for the purpose of constructing a South Jetty at the harbor of Arkansas Pass, Texas. Said Act of the Legislature recited in part that:

> "Whereas, the United States Government will not construct said Jetty unless it owns and controls the land on which the Jetty may be constructed, and also sufficient lands on said Mustang Island on which to locate engineers' offices and other necessary buildings, and for forts and barracks."

Said Act of the Legislature thereupon provided for said grant, reading in part as follows:

> "That so much of the land belonging to the State of Texas in the amount of 100 acres more or less, situated on Mustang Island . . . described as follows:
>
> "Beginning at a point on the Gulf Shore on the boundary line between Section 90 . . . thence S. 50 degrees 5 minutes E *to low water shore line of the Gulf of Mexico; thence northerly with the meanders of the low water line of the Gulf Shore to place of beginning;* containing 100 acres more or less of land above high water mark, including all future accretions and accumulation as the result of nature, or the construction of public works for the improvement and defense of the harbor, be and the same is hereby ceded, granted and transferred to the United States Government on which to locate said Jetty, engineers' offices, forts and barracks and other necessary buildings. . . . *provided that the tide lands in front of and all future acretions and accumulations as the result of nature, and resulting from the works for the*

improvement and defense of the said harbor or pass, or either, to all lands acquired by the United States Government under this Act, . . . are hereby ceded and granted to the United States Government."

7. The State of Texas by Act of its Legislature approved May 10, 1907 (1905-7 Laws of Texas, p. 443) authorized and empowered the City of Galveston to convey to the United States for an immigration station a parcel of 14.887 acres of tide and submerged lands lying in Galveston Bay.

8. At the request of the United States, on June 28, 1912, the State of Texas executed and delivered its deed to the United States, conveying to the United States a parcel of 658 acres of lands of which a substantial portion was submerged lands *extending into the Gulf of Mexico a distance in excess of two miles,* being a strip 200 feet wide along the center line of the Galveston South Jetty extending into the Gulf of Mexico. Said area is described as follows:

"Beginning at a point in the said south boundary of the Fort San Jacinto Military Reservation, marked by a drift bolt in the center of the shore branch of the Galveston South Jetty at station 6902.6 of said jetty, whence Fort Point Light House bears N. 35° 27′ 35″ E. 3,179.3 feet; thence N. 82° W., along the said south boundary and its extension westerly, to the easterly harbor line of Galveston Channel as established by the United States; thence northerly along said harbor line, *including all accretions and all tide lands of the State of Texas* westerly of said harbor line and contiguous thereto, to the intersection with a line parallel with the center line of the Galveston South Jetty and 100 feet northwesterly therefrom;

then northeasterly, and easterly along said line parallel with the center line of the said jetty and 100 feet distant therefrom, and along the extension of said parallel line, to a point whence a line drawn southerly at right angles to the eastern end of said parallel line, will pass 100 feet easterly to the base of the end of the jetty, *including all accretions and all tide lands of the State of Texas northwesterly and northerly of said parallel line and the extension described, and contiguous to said line and its extension;* thence southerly along said line drawn at right angles, and passing 100 feet easterly of the base of the end of the jetty 200 feet, *including all accretions and all tide lands of the State of Texas easterly of said line and contiguous thereto;* thence westerly along a line parallel with the center line of said jetty and 100 feet southerly therefrom, to low water line of the Gulf of Mexico, *including all accretions and all tide lands of the State of Texas southerly of said parallel line and contiguous thereto;* thence southwesterly along said low water line, including all accretions and all tide lands of the State of Texas easterly thereof, to the south boundary of the said U. S. Military Reservation; thence N. 82° W. along the said boundary to the place of beginning. Containing 658 acres."

Said 658-acre tract is depicted on a map prepared by the United States, through its Corps of Engineers, in requesting the patent as aforesaid. A copy of said map is set forth as follows:

9. At the request of the United States, on November 26, 1930, the State of Texas executed and delivered its deed to the United States conveying a parcel of 82.80 acres of lands in Galveston County, known as Canal Lot No. 114, situated approximately 25 miles easterly from the City of Galveston, being a part of the Intracoastal Canal, including substantial areas of submerged lands in and about East Galveston Bay.

10. At the request of the United States, on December, 6, 1880, the State of Texas executed and delivered its deed to the United States conveying to the United States a parcel of 9.98 acres of submerged lands in the harbor of Galveston, being covered to a depth of 4 to 5 feet of water at mean low tide.

11. At the request of the United States, on March 9, 1877, the State of Texas executed and delivered its deed to the United States conveying a 10-acre tract of submerged lands lying between Padre Island and Brazos Island in the Gulf of Mexico.

12. On July 12, 1945, a lease was entered into, at the request of the United States, between the State of Texas, as lessor, and the United States of America, as lessee, leasing a circular area having a 2,000-foot diameter covering submerged lands in Aransas Bay to be used by the lessee exclusively as a site for the location of a stationary anti-submarine bombing target.

13. By Acts of the Legislature of the State of Texas in the year 1913 (1913 Texas Laws, p. 409), in 1917 (1917 Texas Laws, p. 158), and in 1919 (1919 Texas Laws, p. 51), the Commissioner of the General Land Of-

fice of the State of Texas is empowered to lease to any person for the production of oil and gas

> "All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, . . ."

Rental or royalty required under any such lease is at the rate of a fixed amount per acre per annum together with one-eighth of the gross production of oil or gas produced and sold from the leased premises. Said Act provides for a detailed procedure and regulation by the Commissioner of the General Land Office of all leasing and of all such leases. Said Act requires that all royalties and other sums paid under such leases shall be credited by the State Treasurer to the Permanent Free School Fund with all amounts received from the unsurveyed school lands and with two-thirds of the amount so received from other areas and shall credit the General Revenue Fund with the remaining one-third derived from said other areas.

Since August 1913 in excess of 1800 oil and gas leases have been issued by the State of Texas covering tide and submerged lands within the State. There are now in excess of 450 producing wells located on tide and submerged lands pursuant to said leases. The royalties and bonuses derived from such leases and the production of oil and gas therefrom are a part of the Permanent Free School Fund of the State of Texas created by Article VII, Section 2 of the Constitution of Texas.

14. The United States through its Navy Department, by the Commission on Navy Yards and Naval Stations, reported to Congress, pursuant to request of Congress, in the year 1917, in House Document #1946, part #6,

64th Congress, 2nd Session, with respect to certain sites under consideration for a Navy Yard in the vicinity of Galveston, Texas. Eleven (11) separate sites in Galveston Bay and tributaries were inspected by said Commission and were reported in Appendix O1 with an accompanying map showing the location thereof. A copy of the pertinent portion of the map accompanying said report, showing the location of sites #7, #8 and #10, is set forth as follows:

Said report recognizes and asserts ownership of the State of Texas and its grantees in and to the tide and submerged lands in the Gulf of Mexico and in the Galveston Bay area under consideration by said Commission, which reported in part as follows:

"GALVESTON BAY, TEXAS

"Description of Sites:

"215. Eleven sites on Galveston Bay and its tributaries were inspected by the board, six of them being sites adjoining the Houston ship channel northwest of Morgan Point. The Chamber of Commerce of Houston informed the board that the Navy Department could acquire, without difficulty, any location in the vicinity of the six sites with the exception of the Goose Creek oil fields. It further informed the board that its offer to donate 500 acres of any land selected here by the Commission on Navy Yards and Naval Stations still held.

* * * * * * * *

"219. Site No. 7 [referred to in Appendix O-3 as 'Site No. 3'].— It is located on the extreme northeasterly end of Galveston Island. It consists of approximately 800 acres, including 382 acres of the Army Reservation at Fort San Jacinto. Slightly over 400 acres are offered to the Government without cost by Mr. Maco Stewart. There are 2,200 feet of water front on the Galveston Channel. In addition to this frontage the site faces on Bolivar Roads on the northeast and the Gulf of Mexico on the south. The land is now *partly submerged.* In order to make it suitable for naval purposes and safe from storms for any structures that might be built thereon the entire area would have to be raised to a height of 17 feet above mean low water, and a sea wall

constructed about 1¾ miles in length. Deep water would have to be obtained by dredging. At present the only communication with Galveston is by dirt road.

"220. *Site No. 8, Pelican Island* [referred to in Appendix O-3 as 'Site No. 2'].—As described by the Galveston Commercial Association, it consists of a triangular piece of ground having a frontage on Galveston Channel on the south of about 25,000 feet, and extending back on the other two sides of the triangle towards Texas City, a distance of approximately 5 miles on either leg of the triangle. The area is given as 20 square miles. This description covers the entire area on the north side of Galveston Island from Fort Point almost to the causeway from West Bay Point to the mainland, extending as far north as the Texas City channel. *The greater part of this area is submerged land varying from 1 foot to 7 feet below mean low water.* The only lands above water are Pelican Island and Pelican Spit. Pelican Spit has been made largely by the deposit of spoil from the Galveston ship channel. Pelican Island is low and marshy, varying in height from 2 to 4 feet above mean low water. *The city of Galveston, at present, is said to own this site, and except for a few acres which have been leased the entire property is available for naval use.* A large amount of filling would be necessary, and bulkheads would have to be constructed in order to prepare it for development. Communication is by water only, with the further disadvantages consequent upon being located on an island.

* * * * * * * *

"222. *Site No. 10* [referred to in Appendix O-3 as 'Site No. 1'].—This is located on West Bay Point, Galveston Island. It consists of about 2 square miles, a little *more than half of which is submerged.* There is water frontage on the proposed extension of Galveston Channel of about 11,000 feet. The Galveston Channel project at present only provides for extending the channel as far as the eastern boundary of the property. *The land is owned by the State* and by Mr. Maco Stewart and Mr. J. J. Kane. Mr. Kane owns 113½ acres and states that he will sell to the Government for $60,000. The Maco Stewart holding consists of about 150 acres on the eastern side of the site, for which no price was obtained. *The remainder of the land is owned by the State.*" (pp. 63-64.)

On page 221, in Appendix O-3, referred to above, the following data are assembled:

"INFORMATION AS TO SPECIFIC SITE.

"Site No. 1 [referred to as 'Site No. 10' in Par. 222, *supra*]:

* * * * * * * *

"Dimensions of site: This property has a frontage of about 11,000 feet on the proposed extension of Galveston Channel. *It is owned partly by individuals and partly by the State. A large portion of it is submerged land* extending from the proposed channel line to the shore line. That portion of the shore line which would be necessarily included is owned by various individuals. The total area available here would be about 2 square miles, slightly *in excess of one-half being submerged land.*

* * * * * * * *

"Site No. 2 [referred to as 'Site No. 8' in Par. 220, *supra*].

"Location: Pelican Island, lying just north of Galveston Island in Galveston Bay, latitude, 29° 20′ north; longitude 94° 48′ west.

* * * * * * * *

"Present ownership: City of Galveston."

15. In the year 1936 the Board of Engineers for Rivers and Harbors of the United States War Department and the United States Maritime Commission prepared and published a written report entitled "The Port of Houston, Texas". Said report states the ownership of the water front and submerged lands in and around the Port of Houston as follows:

"OWNERSHIP OF THE WATER FRONT.

"The length of the water front at the harbor proper (the turning basin) is 11,720 feet, *owned by the city and navigation district.* In addition, the *city owns considerable frontage on the upper channel,* which is the 7-mile section between the turning basin and the foot of Main Street in the city proper. The city has a total frontage of more than 4 miles. The *navigation district owns Clinton, Irish Bend, and Alexander Islands, and about 9,000 acres of submerged lakes and bays which are available for future developments.* The district has also purchased about 3,000 acres of land at suitable locations for permanent deposit areas for spoil excavated from the channel."

In the same series of reports issued in the year 1940, the War Department and the United States Maritime Commission reported the ownership of the Port of Beaumont, in part, as follows:

"OWNERSHIP OF THE WATER FRONT.

"The publicly owned water front extends a distance of a mile and quarter from the foot of Emmett Street along the west side of the turning basin, thence along the north side of the turning basin, thence up the right bank of the river to the foot of Hickory Street. Within this stretch a small frontage, which is the right-of-way of the Kansas City Southern Railroad where the bridge crosses, is privately owned. On the east side of the river the city of Beaumont owns the water front from the right-of-way of the Kansas City Southern Railroad downstream for about a mile. The city of Beaumont also owns the area adjacent to the Beaumont turning basin which is known as Harbor Island."

In the same series of reports issued in the year 1935 on "The Port of Corpus Christi, Texas" it is stated:

"* * * that all of the basin and water frontage of the Port of Corpus Christi is owned by the Nueces County Navigation District 1."

V.

State of Louisana.

1. The State of Louisiana was admitted into the Union by Act of Congress approved April 8, 1812

> "on an equal footing with the original states in all respects whatever."

By said Act of Admission the Congress recited the boundaries of the State of Louisiana in the Gulf of Mexico extending from the mouth of the Sabine River to the Mississippi River:

> "Including all islands within 3 leagues of the coast."

The limits of the State of Louisiana were enlarged by Act of Congress approved April 14, 1812. The same boundaries are set forth in a preamble of the Constitution of Louisiana adopted January 22, 1812.

2. By Act of the Legislature of the State of Louisiana passed in 1886 (1886 Laws Louisiana, Act No. 106) followed by Acts of said Legislature of 1892 (No. 110), of 1896 (No. 121), and of 1900 (No. 159), the State of Louisiana vested in a board the power to control the oyster industry in the State of Louisiana, and prohibited the dredging of oysters on the natural reefs in the waters of said State. By said Act of 1886, the Louisiana Legislature declared that all beds underlying the navigable waters in the Gulf of Mexico and all bays, inlets, and harbors, bordering on said Gulf within the jurisdiction of the State of Louisiana were vested in said State, prohibited the alienation of said lands in fee, and regulated the development of the oyster industry, by providing for leas-

ing portions thereof to individuals upon payment of specified rentals to the State.

As a result of the regulation of the oyster industry by the State of Louisiana as aforesaid, a conflict arose with the State of Mississippi as to the boundary between said two States extending into the Gulf of Mexico. Suit was filed in the United States Supreme Court entitled *State of Louisiana v. State of Mississippi,* 202 U. S. 1, seeking a determination of said boundary. In said action the State of Mississippi prayed, among other things, that the court determine the boundary line between the states:

> "And that the full title and sovereignty over all the islands ***and the land under the waters*** north and east of said line so established, be decreed and adjudged to be in the State of Mississippi and that the State of Louisiana and her citizens be perpetually enjoined from disputing such title and sovereignty of the State of Mississippi therein."

This honorable court adjudicated the boundary between and title of said two States and a unanimous decision, the opinion being written by Mr. Chief Justice Fuller, stated in part (page 47):

> "We are of opinion that the peninsula of St. Bernard in its entirety belongs to Louisiana; that the Louisiana Marshes at the eastern extremity thereof form part of the coast line of the State; and that the islands within 9 miles of that coast are hers, except as restricted by the deep water sailing channel regarded as a boundary."

Again the court stated (page 52) that:

> "The maritime belt is that part of the sea, which, in contradistinction to the open sea, is under the sway of the riparian States, which can exclusively reserve the fishery within their respective maritime belts for their own citizens, whether fish, or pearls, or amber, or other products of the sea."

The Court determined that the United States Government had recognized Louisiana's title and ownership to this area, stating (page 53) that:

> "Moreover, it appears from the record that the various departments of the United States Government have recognized Louisiana's ownership of the disputed area; that Louisiana has always asserted it; and that Mississippi has repeatedly recognized it, and not until recently has disputed it."

In its decree rendered in favor of the State of Louisiana, this Honorable Court decreed that the submerged lands within the boundaries thus established be in the State of Louisiana, and in this regard provided in its decree entered April 23, 1906 (pages 58-59) that:

> "It is further ordered, adjudged and decreed that the State of Mississippi, its officers, agents and citizens, be and they are hereby enjoined and restrained from disputing the sovereignty *and ownership of the State of Louisiana in the land and water territory* south and west of said boundary line as laid down on the foregoing map."

3. By Act of the Legislature of the State of Louisiana, approved October 25, 1921 (1921 Acts of Louisiana, p. 12), lands belonging to the State of Louisiana in the Mississippi River, in its mouth, and extending to deep

water in the Gulf of Mexico, are authorized to be set aside by the Government and withdrawn from sale or entry in connection with the maintenance of the navigability of the channels at the mouth of said River. Said Act recited, in part, that:

> "Whereas, the United States Government, through its War Department, Chief of Engineers, has requested the cooperation of the State of Louisiana in maintaining the navigability of the channels of and at the mouth of the Mississippi River . . . and it is necessary that certain of the State's lands be retained in public ownership for such purposes."

Said Act thereupon authorized the Governor to withdraw from sale or entry any of the lands belonging to the State and described said lands, in part, as

> "running along and through the channel . . . to deep water in the Gulf of Mexico; and bounded on the south by deep water in the Gulf of Mexico . . ."

4. By Act of the Legislature of the State of Louisiana, approved June 24, 1930 (1930 Acts of Louisiana, p. 6), the State of Louisiana granted and donated to the United States a large area of the beds of streams, lakes, bayous, and lagoons lying in Bossier Parish, Louisiana, for an airport and for military purposes. Said Act recited, in part, as follows:

> ". . . Whereas, the State of Louisiana owns lands which were formerly the beds of certain navigable bodies of water and of other streams in Bossier

> Parish, Louisiana, which are within a tract to be donated by the City of Shreveport to the United States of America for an airport . . . and . . . the United States of America will not accept said tract of land without the inclusion of this property within said tract belonging to the State of Louisiana . . ."

5. On July 26, 1915 the Commissioner of the General Land Office rendered his written ruling rejecting the application of the State of Louisiana made to the United States Surveyor General for a patent of an area of approximately 70,000 acres lying northwest of the mouth of the Mississippi, bordering on Barataria Bay being claimed by the State under the Swamp and Overflow Lands Act of Congress of March 2, 1849 (9 Stats. 352). The Commissioner there held that the 70,000 acres were covered by the flow of tidal waters and therefore belonged to the State of Louisiana by virtue of its sovereignty and stated in part:

> "In view of the facts in this case, as shown by the surveyor's report, the lands in these townships (with noted exceptions) are here decided, subject to all valid, adverse claims, if any, *to be tide lands belonging to the State of Louisiana under its right of sovereignty.* (10 L. D. 365 and 166 U. S. 269, 271.)"

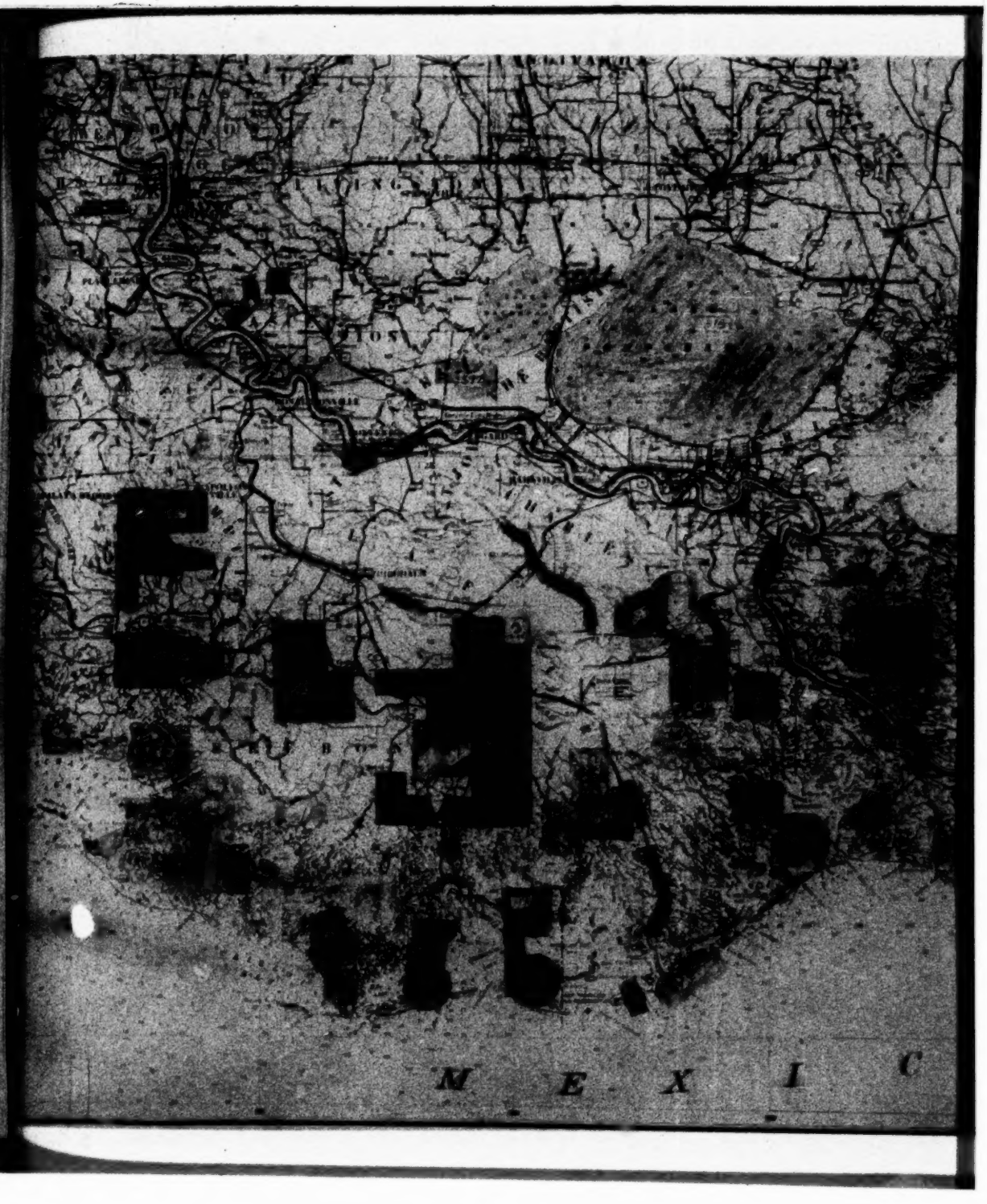
6. By Act of the Legislature of the State of Louisiana, approved July 7, 1910 (1910 Acts of Louisiana, p. 423), amended by Act approved July 11, 1912 (1912 Acts of

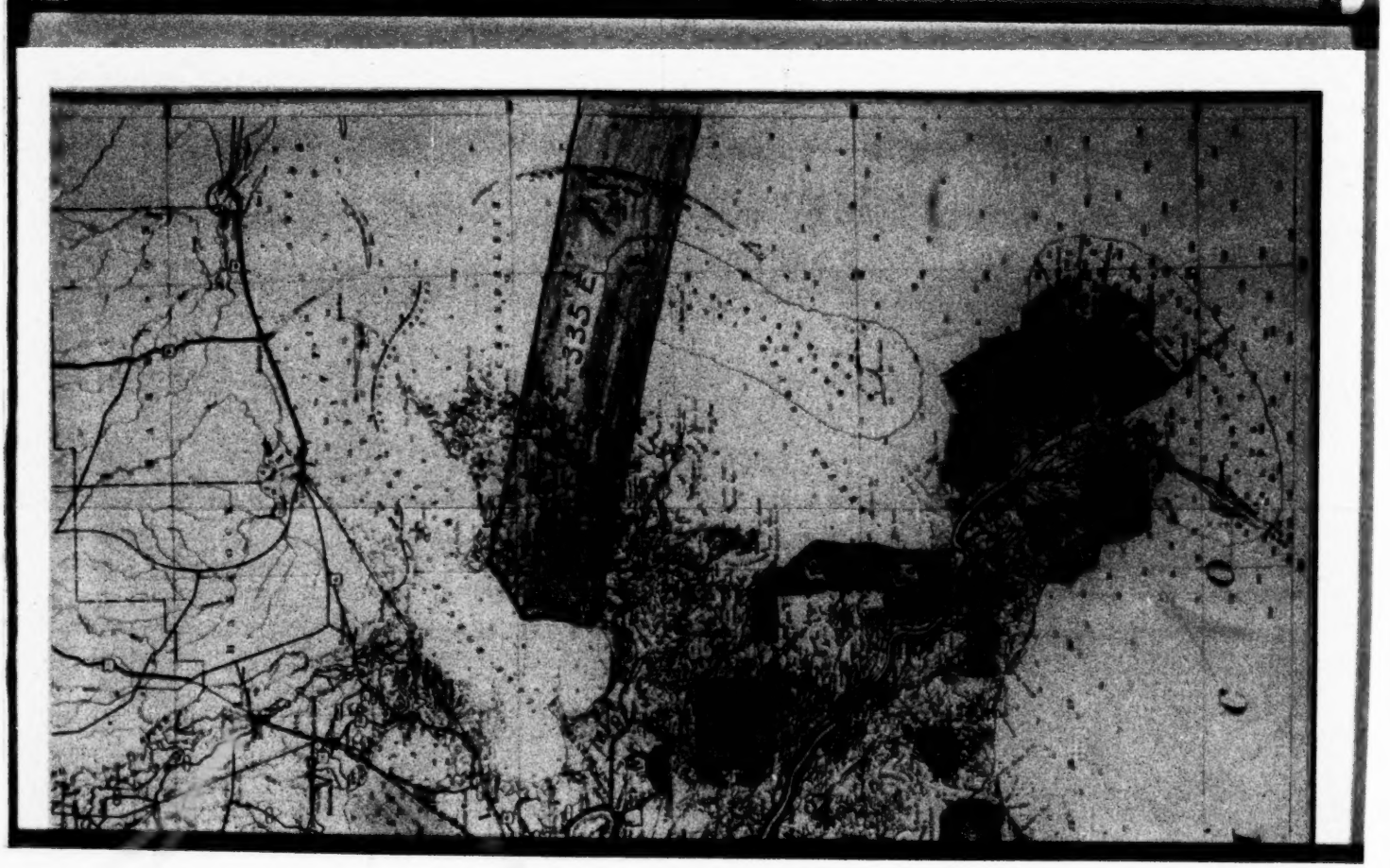
Louisiana, p. 582), and further amended by Act approved June 14, 1915 (1915 Acts of Louisiana, p. 62), a Department of Mining and Minerals, including oil and gas production, was established for the leasing of lands belonging to the State for the development and production of oil, gas, and other minerals, including the authority

> "to lease any lands, including lake and river beds and other bottoms, belonging to the State of Louisiana, for the development and production of oil, coal, gas, salt, sulphur, lignite, and other minerals."

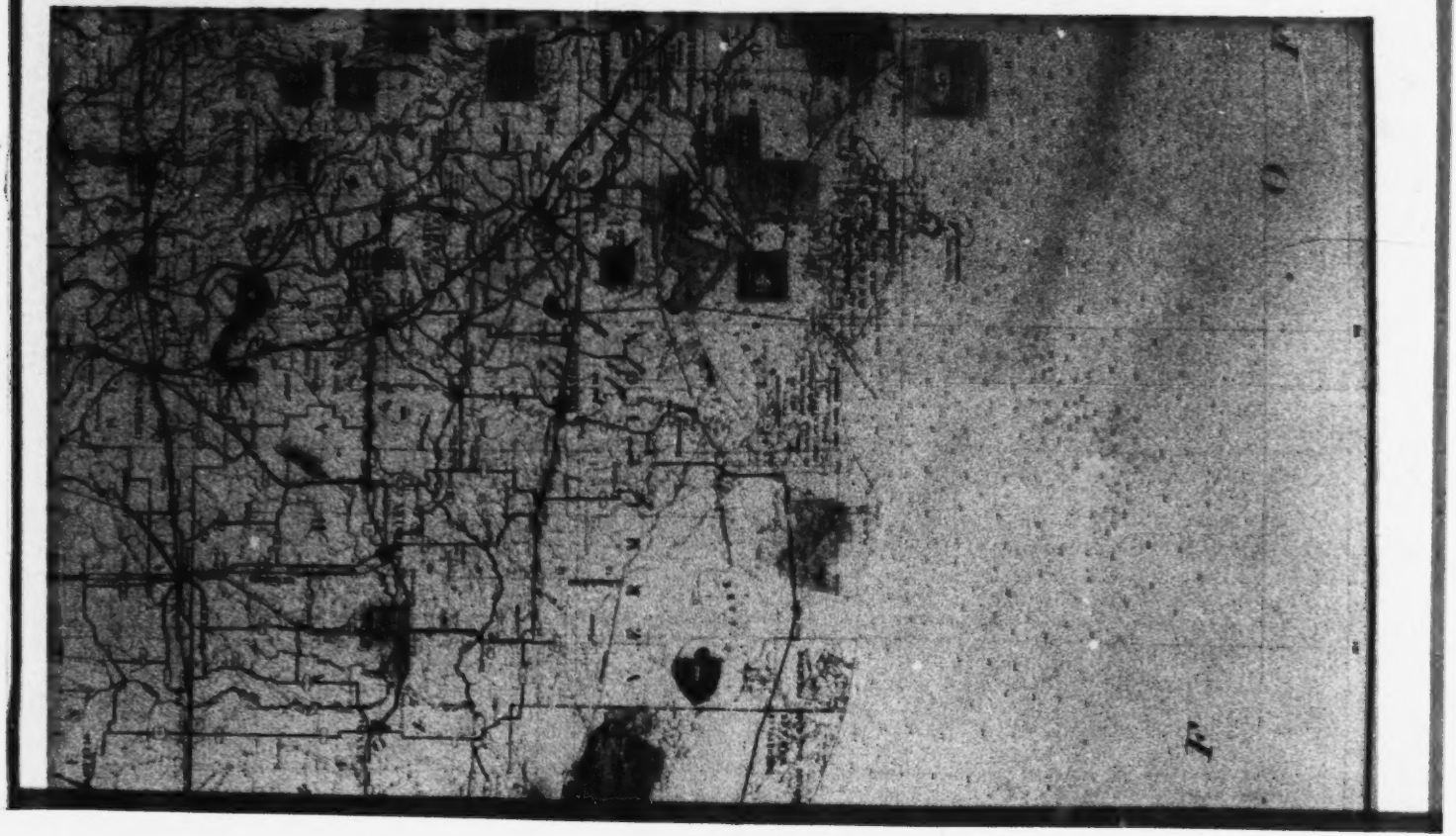
By Act of the 1936 Legislature of the State of Louisiana (Act 93), a State Mineral Board was created as the State leasing agency for the execution of leases for the development of oil and gas and for the regulation thereof. Since the adoption of Act 30 of 1915, the State of Louisiana has executed in excess of 600 oil and gas and mineral leases, approximately 95% of which cover lands underlying navigable and tidal waters of the State including many leases extending into the Gulf of Mexico. At the present time there are in excess of 190 leases of lands underlying such navigable waters within the State of Louisiana, of which number in excess of 65 are producing oil and gas therefrom. The State of Louisiana has collected in excess of $27,000,000.00 since the year 1915 from royalties and bonuses from such leases. In the year 1944, the State of Louisiana received as royalties and bonuses from leases upon lands underlying the waters of the Gulf of Mexico the sum of approximately $1,500,000.00.

Two maps depicting as shaded areas the submerged lands mainly in the Gulf of Mexico leased for oil and gas production by the State of Louisiana are set forth as follows:


M E X I C


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VI.

State of Mississippi.

1. On March 1, 1817, Congress passed its Enabling Act authorizing the people of the territory of Mississippi to form a constitution and State Government, and provided that said State when formed:

> "* * * shall be admitted into the Union on the same footing with the original States, in all respects whatever."

The boundaries of the State of Mississippi to be thereupon formed were established by Section 2 of said Enabling Act. The southerly boundary of said State as therein established was fixed as:

> "* * * thence due south to the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgue; thence up said river * * *"

Pursuant thereto the people of the territory of Mississippi framed a constitution, under date of August 15, 1817. The preamble of said 1817 constitution set forth the boundaries of the State of Mississippi in the same terms as those set forth in Section 2 of said Enabling Act.

By joint resolution of Congress approved December 10, 1817 (3 Stat. 472) the State of Mississippi was admitted into the Union:

> "* * * on an equal footing with the original States, in all respects whatever."

The southerly boundary of the State of Mississippi as set forth in said Enabling Act and in said 1817 con-

stitution was continued in force in the 1868 Constitution by Mississippi, Article II, and in the 1890 Constitution of Mississippi, Article II thereof.

2. An Act of the Legislature of the State of Mississippi approved November 15, 1858 (1858-59 Mississippi Laws, p. 49), granted to the United States the title and jurisdiction to Ship Island lying off the coast of Mississippi *in the Gulf of Mexico, together with the contiguous tide and submerged lands around said Island out to a distance of 1,760 yards below low water mark,* for the construction and maintenance by the United States of forts and other structures. Said Act provides, in part, as follows:

> "For the purpose of enabling the United States to carry into effect an Act of Congress of March 3d, 1857, providing for the fortification of Ship Island, coast of Mississippi, by building and maintaining such forts, magazines, arsenals, dock yards, wharves, and other structures, with their appendages, as may be necessary for the objects aforesaid, jurisdiction is hereby ceded to the United States over the said 'Ship Island,' in the Gulf of Mexico, coast of Mississippi, *to include all of said island above, and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark, and all right, title and claim which this State may have in or to the said Ship Island, coast of Mississippi,* are hereby granted to the United States."

The Legislature of the State of Mississippi in the year 1940 enacted legislation clarifying the description of Ship Island Military Reservation conveyed to the United States by said Act approved November 15, 1858, aforesaid. By

Act approved April 26, 1940 (1940 Laws of Mississippi, p. 556), said grant of title by the State of Mississippi to the United States, extending out into the waters of the Gulf of Mexico around Ship Island to a distance of 1,760 yards from low water mark, was clarified to read, in part, as follows:

> "That the Ship Island military reservation, which was reserved by executive proclamation, dated August 30, 1847, and to which the State of Mississippi, by an act approved November 15, 1858, *ceded all rights, titles and claims to the United States Government* was all of that land described as follows:
>
> "Ship Island in the Gulf of Mexico, coast of Mississippi, to include all of said island above, *and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark.*
>
> "Sec. 2. That Ship Island military reservation be, and the same *is, hereby defined* as Ship Island in the Gulf of Mexico, coast of Mississippi, *to include all of said island above, and within low water mark, and over all the contiguous shores, flats and waters, within seventeen hundred and sixty yards from low water mark.*"

3. The State of Mississippi has at all times since the date of its admission into the Union claimed the ownership of all tide and submerged lands lying within the Gulf of Mexico within its borders, as well as those lying under all navigable waters within the boundaries of said State.

(a) The State of Mississippi by the enactment of its Legislature approved March 4, 1886 (1886 Mississippi Laws, p. 180) granted the right to persons owning lands fronting on the Gulf of Mexico or the Mississippi Sound, or bays and bayous, the exclusive right and authority to plant oysters in the waters thereof in front of their lands and prohibited any other person from removing or interfering with the oysters thus planted. Said Act provides in part as follows:

> "That all persons having or owning lands in the counties of Hancock, Harrison and Jackson in this State, fronting on the Gulf of Mexico or Mississippi Sound, bays or bayous, shall have the exclusive right and authority to plant oysters in the waters of said Gulf of Mexico, bays and bayous, in front of their said lands; *provided,* said right shall not extend across any channel, and only up and to the same, and shall in no way impede or obstruct navigation, or include any natural oyster reefs."

(b) By Act of the Legislature of the State of Mississippi, approved May 16, 1932 (1932 Laws of Mississippi, p. 309), a State Mineral Lease Commission was established charged with the duty of conserving and protecting the natural resources in and under the public lands of the State of Mississippi and exploiting and exploring the same as therein provided. Said Commission was authorized to lease any and all lands owned by said State for the production of oil and gas for at least a one-eighth royalty.

On March 23, 1939, the State of Mississippi executed a lease with Phillips Petroleum Company, lessee, covering many hundreds of thousands of acres of tide and submerged lands owned by the State of Mississippi underlying the navigable waters within the State and lying under the Gulf of Mexico within the boundaries of said State, and said lessee entered into possession thereunder, expended large sums of money, and paid royalties and bonuses to the State of Mississippi in exploring the property for oil and gas. The United States through its War Department granted Phillips Petroleum Company permits applied for by said lessee, pursuant to the 1899 Act of Congress requiring such permit before any structure is placed in any navigable waters, for the erection of facilities in the submerged lands under lease necessary for the exploration of the property for oil and gas.

(c) By Act of the Legislature of the State of Mississippi, approved May 6, 1940 (1940 Laws of Mississippi, p. 384), the said State enacted legislation amending Section 6877 of the Mississippi Code of 1930, as amended by Mississippi Laws of 1934, Chapter 290, regulating the dredging of oysters from public reefs owned by the State of Mississippi within the navigable waters of said State. In said statute the State reserved to itself the right of

> "dredging, taking or gathering oysters, seed oysters or shells for the purpose of replacing on the public reefs of this State."

VII.

State of Alabama.

1. Congress on March 2, 1819, enacted the "Enabling Act for Alabama" authorizing the inhabitants of the territory of Alabama to form a constitution and State Government, and when thus formed said State:

> "* * * shall be admitted into the Union upon the same footing with the original States, in all respects whatever."

By said Enabling Act, Congress established the boundaries of said State thereupon to be formed and fixed the southern boundary of said State to be:

> "* * * thence, due south, to the Gulf of Mexico; thence, eastwardly, including all islands within six leagues of the shore, to the Perdido River; and thence, up the same, to the beginning."

Thereupon the people of the territory of Alabama framed a constitution dated August 2, 1819. In the preamble of said constitution the boundaries of said State are set forth in the same language as is contained in said Enabling Act of Congress.

By joint resolution approved December 14, 1819, Congress admitted the State of Alabama into the Union:

> "* * * on a equal footing with the original states, in all respects whatever."

The 1867, 1875 and 1901 Constitutions of Alabama, Article II, retained the southerly boundary of the State as established by said Enabling Act and said 1819 Constitution.

The boundary of the State of Alabama extending into the Gulf of Mexico has been held to extend to a point at least ¾ mile from the beach of Dauphine Island in Mobile County lying gulfward of the entrance of Mobile Bay. In *Bosarge v. State* (1928) 23 Ala. App. 18, 121 So. 427; *certiorari* denied 219 Ala. 154, 121 So. 428, the Court of Appeals of Alabama so held and stated in part:

> "In the case of Manchester v. Massachusetts, 139 U. S. 240, 11 S. Ct. 559, 35 L. Ed. 159, cited by appellants, it is laid down as the law by the Supreme Court of the United States that, 'as between nations, the minimum limit of the territorial jurisdiction of a nation over tide-waters is a marine league from its coast,' and that 'the extent of the territorial jurisdiction of Massachusetts [and, we may interpolate, *any* coast state] over the sea adjacent to its coast is that of an independent nation, and, except so far as any right of control over this territory has been granted to the United States, this control remains with the state.'
>
> "Applying the law as just quoted to the facts in the instant case, it is apparent that the place where appellants were engaged in 'trolling for shrimp' was a place within the 'territorial jurisdiction' of the state of Alabama, and that the judgment of conviction should be affirmed." (121 So. 428.)

This Honorable Court denied a petition for certiorari to the Court of Appeals of Alabama in *Bosarge v. State* in 280 U. S. 568, 50 S. Ct. 26, 74 L. Ed. 621 (1929).

2. The State of Alabama, by Act of its Legislature, approved January 23, 1875, made provision for granting to the United States the title to land belonging to Alabama, covered by navigable waters, for sites for light-

houses, beacons, and other aids to navigation, in not to exceed 10-acre tracts. Said Act (1875 Acts of Alabama, p. 155) provides, in part, as follows:

> "SECTION 1. *Be it enacted by the General Assembly of Alabama,* That whenever the United States desire to acquire title to land belonging to this State, and covered by the navigable waters * * * and within the limits of this State, for the site of a light house, beacon or other aid to navigation, and application is made therefor by a duly authorized agent of the United States, describing the sites required for one of the purposes aforesaid, then the governor of the State is authorized and empowered to convey the title to the said United States, and to cede to the United States jurisdiction over the same; *Provided,* no single tract shall contain more than ten acres. . . ."

3. By Act of the Legislature of the State of Alabama, approved February 19, 1919 (1919 General Acts of Alabama, page 154), there was granted a tract of 12 acres of lands underlying navigable waters for the establishment of a quarantine station. In said Act, the Legislature recited the State's title to all lands covered by navigable waters and recited the request of the United States for conveyance of said site in the following language:

> "That *whereas, title exists in the State of* Alabama to all land covered by navigable water within the State; and
>
> *"Whereas,* the Government of the United States, in its dredging operations for the improvement of such navigable waters, has deposited upon part of said lands the spoil of dredging, thereby raising them in

places above the surface of the water and made shallow adjacent thereto; and

"Whereas, the title so held by the State of Alabama is held in trust for the benefit of commerce and navigation; and

"Whereas, the United States Government is desirous of establishing a suitable maritime quarantine station upon such lands so held by this State, and *the State is willing to concede a site therefor outside of the improved and navigable channels of such water:"*

Said Act of the Legislature of the State of Alabama thereupon granted to the United States said 12-acre tract in the following language:

"That there is hereby granted to the United States Government such lands as the said Government may select and designate, as hereinafter provided, a tract of twelve acres of such land, *title to which is now so held by this State,* for the purpose of the establishment and maintenance of a marine quarantine station, detention hospitals and houses, and other improvements which may be suitable to such station or needful thereat.

"Section 2. Be it further enacted: That upon the filing in the office of the secretary of State of Alabama of a statement or application by the secretary of the treasury of the United States, designating by metes and bounds, or in any other appropriate and specific manner, the particular portions or portion of such land, whether covered by water or now dry, or both dry and the shallows adjacent thereto, comprising the twelve acres desired, the governor of the State shall, and he is hereby authorized and empowered to convey by letters patent, or other suitable methods, the title of the State to said thus designated

twelve acres of land, to the Government of the United States, for use as a maritime quarantine station. The title to remain in the Government of the United States so long as the same shall be so used as a quarantine station, and to revert, in case of abandonment by the United States Government as such, to the State of Alabama."

4. The United States requested the State of Alabama to grant an 80-acre tract of tide and submerged lands in and around Sand Island in Mobile Bay for a quarantine station. Pursuant to said request and pursuant to legislative authority, the State of Alabama executed a deed conveying to the United States said 80-acre parcel of tide and submerged lands under date of May 14, 1925, and said deed was filed for record in Mobile County, Alabama, on July 13, 1925, recorded in Deed Book 204 N. S., p. 519.

Said deed of May 14, 1925, recited that the Congress of the United States had authorized the construction of a quarantine station in Mobile Bay on a site to be granted by the State of Alabama, stating, in part, that:

> "Whereas the Congress of the United States by its Act of February 19, 1925, has authorized the construction of a quarantine station on said Sand Island . . . or on site on said Island to be granted by the State of Alabama to the United States Government, for the purpose of constructing said quarantine station, . . ."

Said deed further recited the ownership of the lands by the State of Alabama, stating, in part, that:

> "Whereas the land hereby conveyed is owned by the State of Alabama, . . ."

Said deed also provided for a reverter of title to the State of Alabama, stating, in part, that:

> "It being understood and agreed, however, that this conveyance is made and the title herein conveyed is on the condition that said lands herein conveyed are to be used by the United States Government as a site for the quarantine station, or for other governmental public purposes; provided, however, if the United States Government ceases the use of the lands herein conveyed for such purposes the title to and jurisdiction over said lands shall revert to the State of Alabama."

5. The United States, by its Navy Department, through its Commission on Navy Yards and Naval Stations, rendered a report to Congress in House Document No. 1946, Part 6, 64th Congress, Second Session, concerning available sites for a navy yard in Mobile Bay, Alabama, said report stating, in part, with respect to Site No. 4, that:

> "The Bay is in the Southwest part of the State of Alabama about 80 miles West of Pensacola, Florida, and has an area of about 342 square miles. The Commission investigated 7 sites on Mobile Bay and the vicinity. These are shown on Coast and Geodetic Chart No. 188, Appendix, K-1.
>
> * * * * * * * *
>
> "155. *Site No. 4, Sand Islands.* These islands have been made by Government dredging operations, the material having been pumped up from the main channel, which skirts its easterly side, and apparently consist almost exclusively of sand. They are said to have had a maximum elevation of 20 feet, but this has decreased by conditions of wind and weather to a maximum of 18 feet or less. The shores are sloping and the surrounding water area quite shoal, so

that no attempt was made to land here. No definite statement could be obtained of the area available, but it is probable that it does not exceed 135 acres, although the surrounding waters are so shallow that 600 or 700 acres of land could be obtained by filling. The proposed city pier projects almost to the southern end of this suggested site, and the city's project contemplates dredging a cross-channel from the main channel to its docks. This area is at present unsuitable for naval use, as any anchorage or turning basin would necessarily have to be secured by extensive dredging, and it is problematical as to what the maintenance cost per annum would be. The United States engineer accompanying the board stated that for the 30-foot channel project authorized by Congress the estimated total maintenance is $150,000 per annum, this being based on a cost of 2½ cents per cubic yard for dredging. This estimated cost does not take into consideration interest on dredging plant, investment, and deterioration. In connection with site No. 4, the committee stated that the Sand Islands formed by Government operations *were the property of the State,* but that should the Government decide upon this location *it was believed that there would be no difficulty in obtaining them from the State;* the legislature, however, does not meet for two years. Out of all the sites offered this seems the only one worthy of further consideration for a navy yard, and it is recommended that the commission have a layout made similar to that used for San Francisco Bay sites, together with estimated costs for dredging channels, turning basins, etc., in connection with same, and consider such layout and estimates in its final report." (p. 56.)

* * * * * * * *

"(a) The Sand Islands extend about three miles, starting immediately below Choctaw Point, at the mouth of Mobile River, and following the channel. Having been formed by dredging operations, they are *the property of the State of Alabama,* which *in turn gave the city of Mobile right to enter upon and use them for any indefinite period.* More recently there has been a movement with the personal but unofficial approval of the engineer in charge (Maj. W. L. Guthrie since promoted and transferred to the command of a regiment) looking to the dedication of these islands, together with an additional strip of submerged land in extension thereof, 3,000 feet in width and extending from Choctaw Point to the Lower Fleet, to the United States Government, to be available for shipyards, wharves, docks, storehouses, etc., for river and harbor work, shipbuilding and other purposes. The plan would contemplate one or more gaps, affording access to the dredged channel for the vessels that will be accomodated at the new Municipal Pier to be constructed at Arlington and extending practically to the Sand Islands, thus forming a protected harbor and turning basin. *Attached to this report are communications expressing the favorable attitude of the city commission and the State harbor commission toward this plan.* While the approval of the State legislature may be expected with considerable assurance, the legislature does not meet for about two years, and the suggestion has been made *that the United States Government may exercise the right to eminent domain if it deems it expedient for immediate purposes."*

A map of the available sites in Mobile Bay, described and commented upon in said Commission's report contained in said House Document No. 1946, *supra*, was attached to said report. A copy of said map, showing particularly said Site No. 4 above described and commented upon, is set forth as follows:


Anchorage Basin

6. Leasing of submerged lands under navigable waters within the 3-mile limit of the shore of the State of Alabama was authorized by Act approved July 10, 1943 (1943 Alabama General Acts, p. 612), amending 1940 Code of Alabama, Title 47, Section 55. Said Act approved July 10, 1943, reads, in part, as follows:

> "(b) The Governor, on behalf of the State, is hereby authorized to lease, upon such terms as he may approve, any lands or interest therein *owned by the State, including lands or any right or interest therein in or under any navigable* stream or navigable waters, bays, estuaries, lagoons, bayous or lakes, and the shores along any navigable waters to ordinary high tide mark, and *lands under navigable waters within the three mile limit from the shore line of any county or counties in Alabama,* for the purpose of exploring for, and mining or producing oil, gas, and other minerals upon or from such lands."

Pursuant to said Act of the Legislature of the State of Alabama, a lease was executed under date of August 11, 1943, between the State of Alabama, as lessor, and W. L. Stewart, a lessee, covering approximately 680,000 acres of tide and submerged lands, constituting all lands of the State of Alabama underlying Mobile Bay, Bon Secour Bay, Oyster Bay, Mississippi Sound and the Gulf of Mexico, out to the three-mile limit. Pursuant to said lease, defendant is informed and believes, and therefore alleges said lessee has entered into possession and has carried on operations in exploring for oil and gas deposits in and under said tide and submerged lands, and has paid to the State of Alabama the royalties required under the terms of said lease.

VIII.

State of Florida.

1. The State of Florida was admitted into the Union by Act of Congress approved March 3, 1845

> "on equal footing with the original states, in all respects whatever."

The 1838 Constitution of the State of Florida declared the boundaries of the state as follows:

> "The jurisdiction of the State of Florida shall extend over the Territories of East and West Florida, which by the treaty [Feb. 22, 1819] were ceded to the United States."

2. The second Constitution of 1865 described the boundaries of the State as:

> ". . . commencing at the mouth of the River Perdido from thence up the middle of said river . . . thence down the middle of [St. Mary's] river to the Atlantic Ocean, thence southwardly to the Gulf of Florida and Gulf of Mexico thence northwestwardly and westwardly including all islands within five leagues of the seashore to the beginning."

The boundaries of the State of Florida as set forth in its 1868 Constitution, Article II are as follows:

> "The boundaries of the State of Florida shall be as follows: * * * thence straight to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southeastwardly along the easterly edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwest-

wardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning."

3. By Act of the Legislature of the State of Florida (1913 Laws of Florida, Chapter 6532, Section 1) the state declared its ownership of all bays, oceans, gulfs, beds, lakes and inlets within the boundaries of the state. Said Act of the Legislature provides in part as follows:

> ". . . Beds, bottoms . . . lakes, bays, sounds, inlets, oceans, gulfs, and other bodies of water within the jurisdiction of Florida shall be the property of the state. . . ."

4. The Legislature of the State of Florida in the year 1856 made provision for granting to the United States title of the State to lands covered by water in front of any lands owned by the United States (1856 Laws, Chap. 791, Sec. 1). This statute provides in part as follows:

> ". . . the State of Florida . . . divest themselves of all right, title and interest to all lands covered by water, lying in front of any tract of land owned . . . by the United States . . . lying upon any . . . Bay of the Sea, or Harbor, as far as to the edge of the channel, and hereby vest the full title to the same . . ."

5. At the request of the United States the State of Florida, by Act of its Legislature approved June 18, 1929, granted to the United States a large area of submerged lands situated in the Atlantic Ocean along the coast of the State of Florida extending from Jacksonville to Miami, for the construction by the United States of an Inland Waterway, being a strip or right of way not in excess

of 500 feet in width. Said Act of June 8, 1929 (Fla. Stats. 1929, Chap. 264) provides in part as follows:

"WHEREAS, under an Act of the Congress of the United States entitled 'An Act authorizing the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes' duly approved by the President of the United States on January 21, 1927, provision was made for the construction of an Inland Waterway in general seventy-five feet wide and eight feet deep at local mean low water following the coastal route from Jacksonville, Florida to Miami, Florida, in accordance with the report submitted December 14, 1926, in House Document Numbered 586, Sixty-ninth Congress, second session and subject to the conditions set forth in said document, and

"WHEREAS, under the conditions set forth in said House Document No. 586, 69th Congress, 2nd Session, it is required that local interests shall acquire the necessary right-of-way and transfer the same free of cost to the United States, and

"WHEREAS, under an Act of the Legislature of the State of Florida, duly approved by the Governor of the State, the said Act being published as Chapter 12026, Laws of the State of Florida enacted in 1927, the Florida Inland Navigation District was created for the purpose, *inter alia,* of acquiring and transferring to the United States the right-of-way necessary for the waterway hereinabove named, and

"WHEREAS, the said Intracoastal Waterway will traverse certain *submerged, semi-submerged* and marsh-lands, islands and/or uplands *which are now owned by the State of Florida and which are located within or adjoin certain natural waterways* situate on or near the eastern coast of the State of Florida, to-wit: St. Johns River, Pablo Creek, North River

(otherwise called Tolomato River), Matanzas River, Smith's Creek, Halifax River, Hillsborough River in Volusia and Brevard Counties and Mosquito Lagoon (otherwise called Indian River North), Indian River, Peck Lake, Jupiter Narrows, Hobe Sound, Jupiter Sound and Jupiter River, Lake Worth Creek and Lake Worth, Lake Wyman, Lake Boca Raton, Hillsborough River in Palm Beach and Broward Counties, Middle River, New River, Lake Mabel and New River Sound, Dumbfounding Bay, Snake Creek, Biscayne River and Biscayne Bay, and various other natural waterways which, though not herein specifically named, lie between and are connected with one or more of the waterways hereinabove so named:

"Now Therefore

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

"Section 1. For the purpose of aiding in the construction by the United States of the proposed Intracoastal Waterway from Jacksonville, Florida, to Miami, Florida, in accordance with the project as adopted and authorized by the Congress of the United States in an Act approved by the President of the United States, January 21, 1927, the Trustees of the Internal Improvement Fund of *the State of Florida* be, and *they hereby are, empowered and directed to grant and/or transfer by good and sufficient title to the United States a right of way through the submerged, semi-submerged* and marsh-lands, islands and uplands to be traversed by the said intracoastal waterway in so far as such lands are subject to grant

and/or transfer by the State of Florida, provided that the boundaries of said right-of-way shall be at such distances as the United States may require from the center line of the said waterway proper as the same may be described in a certificate or certificates to be furnished to the said Trustees by the Secretary of War or by any officer of the Corps of Engineers of the U .S. Army, or by any other official duly appointed by the Secretary of War to exercise control over the construction, maintenance and/or operation of the said waterway, and provided further that, except as may be necessary for the easing of bends in the interests of navigation, the said right-of-way shall not exceed five hundred (500) feet in width.

"Section 2. If and whenever in the construction of such inland waterway within this State, any lands which *have heretofore been submerged and which now belong to the State* shall be raised above the water by the deposit of excavated material, so much of the lands so raised as lie within the limits of said right-of-way hereinabove set out as being five hundred (500) feet in width shall become the property of the United States."

6. By deed dated December 28, 1938, the State of Florida, by its Trustees of the Internal Improvement Fund, granted to the United States a tract of approximately *450 acres of submerged lands extending over two (2) miles into the Atlantic Ocean* at the mouth of the St. Johns river required by the United States for the construction of a jetty in connection with improvements at the mouth of said river. A map showing the location of said 450 acre parcel of submerged lands is set forth as follows:

Said deed was granted pursuant to the Act of the Legislature of the State of Florida and reserved to the State of Florida ¾ undivided interest in and to phosphate, minerals and metals that may be in or under said granted lands, and an undivided ½ interest in and to all petroleum that may be in or under said granted lands.

7. On March 9, 1908, the Commissioner of the United States General Land Office addressed a communication to M. G. Middleton, Crescent Beach, Florida, rendering an opinion as to the status of title to described lands lying between the channel of the Matanzas River and the shore. Said Middleton had made inquiry of the Department of the Interior and Commissioner of the General Land Office thereof as to whom said lands belonged and as to how they might be obtained for the cultivation of oysters, and in his ruling the Commissioner of the General Land Office stated that:

> "The State [Florida] claimed lands designated as unsurveyed on the plat of 1853 under the Swamp Grant, * * * The Land Department will not undertake to dispose of lands which exist between the shore of the river as shown by the plat of 1850 and the actual channel or bed thereof. ***Such lands are no doubt tide lands and belong to the State by its right of sovereignty.***"

A plat showing the location in detail of the lands referred to in the foregoing opinion of the Attorney General is set forth as follows:

8. On May 15, 1909, the Commissioner of the United States General Land Office addressed the Commissioner of Agriculture of the State of Florida, rejecting the claim of the State of Florida under the Act of Congress granting swamp lands. Said application involved a certain described block of tide or submerged lands lying in the bottom of the St. Johns River near its mouth as it emptied into the Atlantic Ocean. In his ruling of rejection the Commissioner of the General Land Office there stated in part that:

> "The St. Johns River is a navigable stream, and in that part of the state it must necessarily be affected by the tides, and, before it can be determined whether, or not, the islands in question inure to the State under the swamp grant, it must be shown that such islands were in existence on March 3, 1845, the date the state was admitted into the Union, for if such islands have formed since March 3, 1845 *they apparently belong to the state under its right of sovereignty,* and the Land Department would have no jurisdiction over such islands. (*Hardin v. Jordan,* 140 U. S. 371 (Stats. Fla. Sec. 632.)"

A plat showing the location of the tide and submerged lands referred to in the mouth of the St. Johns River is set forth as follows:

9. On April 20, 1910, the Commissioner of the United States General Land Office addressed a communication to the Florida Commissioner of Agriculture, rejecting the application of the State of Florida under the Act of Congress granting swamp lands. The area covered certain tide or submerged lands east of the key on which the City of Key West, Florida, is situated on the edge of the Florida Straits southward and thence to the open sea. In his letter of rejection the Commissioner of the General Land Office there stated in part:

> "The townships are in the Straits of Florida and there is nothing in the papers to show that the key or keys on which lands applied for are situated existed on September 28, 1850. Again, if the key or keys were formed subsequent to March 3, 1945, the date the State was admitted into the Union, and are within its borders, *title thereto would appear to be in the state by its right of sovereignty.*"

A map of the areas of tide or submerged lands referred to in the foregoing ruling of the Commissioner of the General Land Office is set forth as follows:

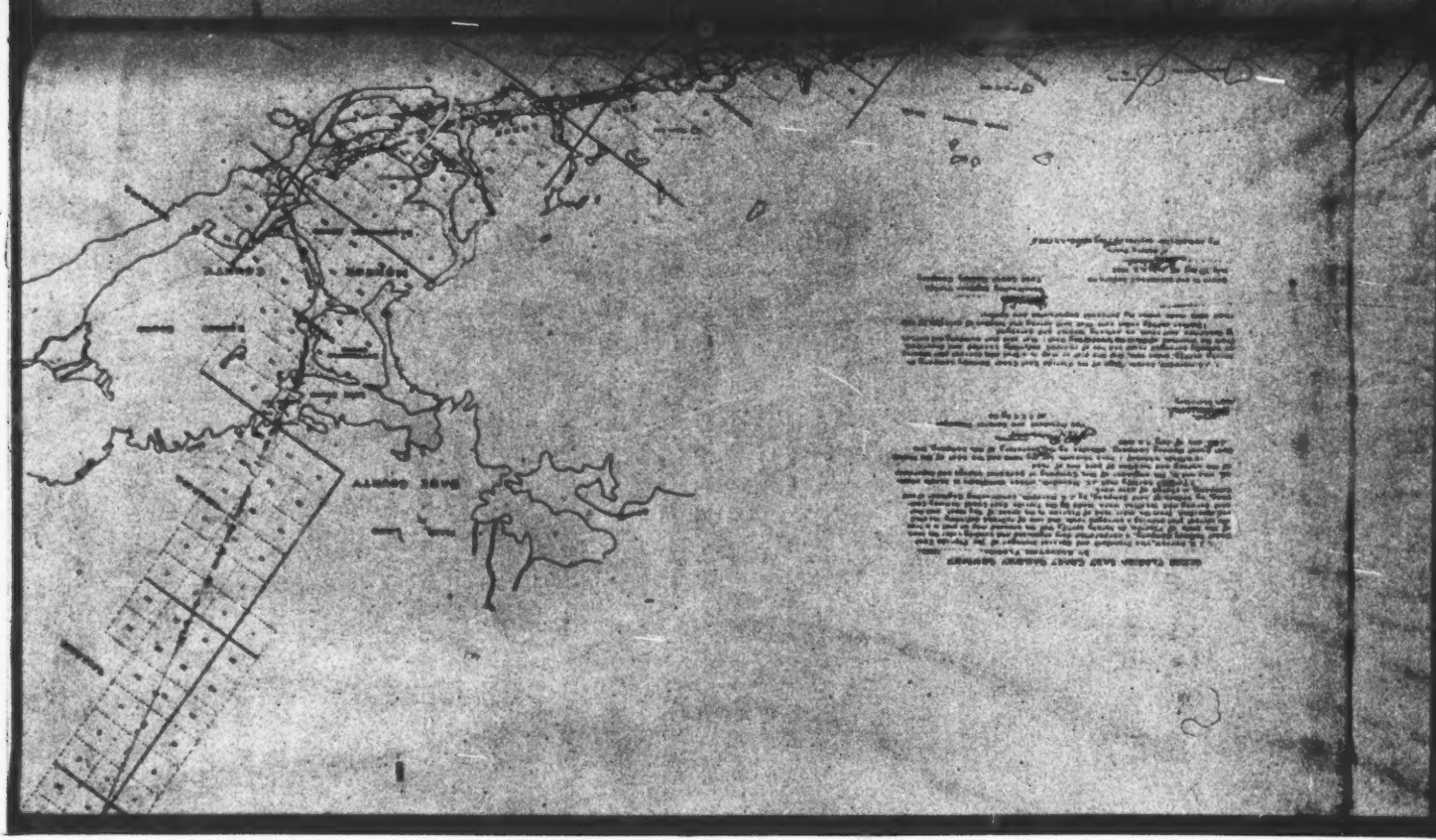
10. The United States through its War Department on March 18, 1939, addressed a communication to the Board of Trustees, Internal Improvement Fund of the State of Florida, requesting that a permit be granted to the United States to deposit dredged material obtained from dredging the entrance channel in the Gulf of Mexico to Crystal River, the area to be used for this purpose extending for two miles into the Gulf of Mexico. Permission was granted to the United States by said Board of Trustee to deposit dredged materials in the spoil areas shown on the map prepared by the United States accompanying said letter request of March 18, 1939. A copy of said map, showing the location of the spoil areas being a part of the map prepared by the United States War Department accompanying said application is set forth below:

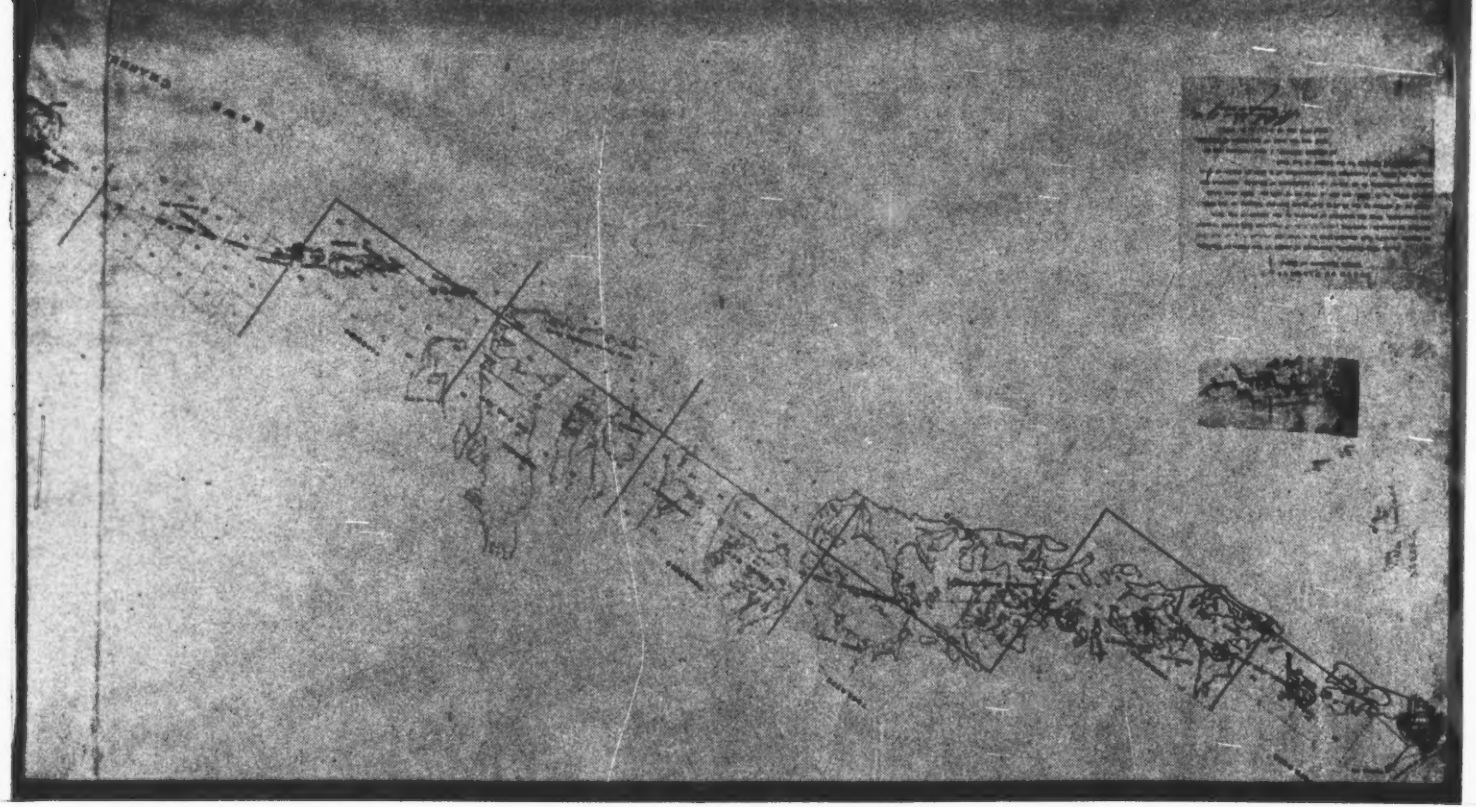
11. In the year 1905 the Legislature of the State of Florida made a grant to railroad corporations for a site for a railroad from the mainland of Florida to Key West on and over submerged and other lands belonging to the State and over waters of the state, and to authorize the filling of the submerged lands. (1905 Laws, Florida, Chap. 9595.)

Said Act of the Legislature required the railroad corporation accepting such a grant to file a plat with the Secretary of State of the State of Florida showing the surveyed route and line of the railroad from the mainland of Florida to the line at Key West, and provided that such railroad must commence construction thereof within six months from the filing of such map. Section 6 of said act provides in part that:

> "That the corporation constructing said line of railroad from the mainland of Florida to the line at Key West is hereby granted a right of way for the width of 200 feet on each side of the railroad over and through land owned by the State of Florida on the line of its route and a right of way *over the waters of the state* 200 feet on each side of the roadbed and shall have the right to fill in, occupy and use *the submerged lands of the state* on the side of its road for 200 feet on each side of the line of roadbed and to construct trestles, concrete arches and drawbridges *over and across such submerged lands.* . . ."

The Florida East Coast Railway Company, a Florida corporation, prepared and filed with the Secretary of State of the State of Florida on July 10, 1905, a plat showing the surveyed route of the line of its proposed railroad from the mainland of Florida to the line at Key West, a distance of in excess of 125 miles, traversing large areas of submerged lands. A photostat of said plat is as follows:





Said Florida East Coast Railway Company, did thereafter pursuant to said Act of the Legislature construct its railroad over the right of way thus granted to it.

Subsequently and in the year 1936 said Railroad filed an application with the Interstate Commerce Commission of the United States seeking authorization to abandon its railroad from the mainland of Florida to Key West constructed as aforesaid, as a result of the destruction of a substantial portion of its roadbed between Key Largo and Key Vaca by a tropical storm, and the service on the railroad was thereafter discontinued. The Interstate Commerce Commission rendered its opinion and order on September 18, 1936 (217 ICC Rep. p. 325) reviewing the history of said railroad and its right of way to Key West, and authorized the receivers of said railroad to sell that portion of the right of way between Lower Matecumbe Key and No Name Key, selling a portion thereof to a political subdivision of the State of Florida for the sum of $640,000 and selling the remainder thereof to Monroe County, the State Road Department of Florida and the City of Key West for the purpose of establishing a proposed highway. Pursuant to said order of the Interstate Commerce Commission authorizing such abandonment, said Railroad was abandoned and said right of way disposed of in accordance with the authorization granted by said commission.

12. A 300-acre tract of property situated at the mouth of the St. John's River, a substantial portion of which was submerged lands, was conveyed to the United States by

the State of Florida through its Armory Board by deed dated September 2, 1939, recorded in Deed Book 836, page 46, Public Records of Duval County, Florida. Said property was conveyed to the United States under the provisions of the Act of Congress of April 25, 1935 (Public Law No. 430, 76th Congress). A certificate of title was issued to the United States by Title and Trust Company of Florida under date of October 12, 1939. The Attorney General of the United States rendered his opinion under date of November 2, 1939, that the State of Florida, at the date of said grant, was the owner of said lands.

IX.

State of Georgia.

1. The State of Georgia is one of the original thirteen States of the United States of America. The Charter of 1732 from George II, King of England, to James Oglethorpe for the Colony of Georgia, fixing the eastward boundaries, is described in Paragraph VII of the First Affirmative Defense hereof.

The 1798 Constitution of Georgia defines the easterly boundary of said State in part as follows:

> "* * * along the middle of St. Mary's River to the Atlantic Ocean; and from thence to the mouth or inlet of the Savannah River * * * including * * * all the islands within 20 leagues of the seacoast * * *" (Art. I., Sec. 23, 1798 Constitution.)

The Political Code of Georgia, Section 17, adopted in the year 1861, and again in 1868 and subsequently, defines the easterly boundary of the State in part as follows:

> "* * * along the middle of St. Mary's River to the Atlantic Ocean, and from thence to the mouth or inlet of the Savannah River * * * *including all the lands, waters, islands and jurisdictional rights within said limits and also all the islands within 20 marine leagues of the seacoast.*"

By Act of the Legislature of the State of Georgia in 1916 (Ga. Act 410 of 1916; Amended Code (1916) Section 16) the easterly boundary of the State is defined as:

> "* * * along the middle of said [St. Mary's] River *to the Atlantic Ocean, and extending therein three English miles from low-water mark;* thence running in a northeasterly direction and following

the direction of the Atlantic coast to a point opposite the mouth, or inlet, of said Savannah River; and from thence to the mouth or inlet of said Savannah River * * * *including all the lands, waters, islands, and jurisdictional rights within said limits, and also all the islands within twenty marine leagues of the seacoast."*

2. The State of Georgia has exercised its ownership of the tide and submerged lands within its jurisdiction.

(a) The State of Georgia has prescribed the boundaries of land adjacent to or covered by or bordering upon the tidewaters of said State, and the rights of owners of such adjacent lands, including the exclusive right to take oysters, clams and other shell fish thereon. By Act of the Legislature approved December 16, 1902 (1902 Georgia Laws, Page 108) it is provided in part that:

"SECTION 1. That from and after the passage of this Act the title to the beds of all tide-waters in this State, where the tide regularly ebbs and flows, and which are not navigable under section 2 of this Act, shall vest in the present owner of the adjacent land for all purposes, including among others, the exclusive right to oysters, clams and other shell fish therein or thereon. If the water is the dividing line, each owner's boundary shall extend to the main thread or channel of the water. If the main thread, or center, or channel of the water changed gradually, the line follows the same, according to the change. If for any cause it takes a new channel, the original line, if capable of identification, remains the boundary. Gradual accretions of land on either side accrue to the owner.

"SEC. 2. Be it further enacted by the authority aforesaid, *That a navigable tide-water, in contemplation of this Act, is any tide-water, the sea, or any* inlet thereof or other bed of water where the tide regularly ebbs and flows, which is in fact used for the purposes of navigation, or is capable of bearing upon its bosom at mean low tide boats loaded with freight in the regular course of trade. The mere rafting of timber thereon, or the passage of small boats thereover, whether for the transportation of persons or freight, shall not be deemed navigation within the meaning of this Act, and does not make tide-water navigable.

"SEC. 3. Be it further enacted by the authority aforesaid, That for all purposes, including among others the exclusive right to the oysters and clams (but not to include other fish) therein or thereon being, the boundaries and rights of owners of land adjacent to or covered in whole or in part by navigable tide-waters, as defined in section 2 of this Act, shall extend to low water mark in the bed of the water; provided, however, that nothing in this Act contained shall be so construed as to authorize such an exclusive appropriation of any tide-water, navigable or unnavigable, by any person whomsoever, as to prevent the free use of the same by others for purposes of passage and for the transportation of such freights as may be capable of being carried thereover."

(b) By Act of the Legislature of the State of Georgia approved December 19, 1899, as amended by Act approved December 10, 1902 (1902 Georgia

Laws, Page 107) said State declared that it shall be unlawful for any nonresident of the State of Georgia to take or catch any oysters or fish

> "from the public waters of this State, for the purpose of selling the same."

(c) By the Code of Georgia of 1895, Section 1694, as amended by Act of the Legislature of the State of Georgia approved August 22, 1905 (1905 Georgia Laws, Page 73) it is made unlawful to take or catch any oysters

> "in any of the waters of this State"

by certain described means

> "except within the waters more than one thousand feet distant from the shoreline at ordinary mean tide."

3. By Act of the legislature of the State of Georgia of December 22, 1820 (1820 Ga. Laws, p. 30), the State of Georgia granted to the United States sites or parcels on which the United States had erected beacons and beacon-lights, said act reading in part as follows:

> ". . . That whatever right, title or interest the state of Georgia may have in, or to the sites or parcels of ground, or any of them, whereon the United States of America have placed or erected beacons, or beacon lights on Tybee island, on Cockspur island, on the Oyster bank opposite said Cockspur island, on the White Oyster bank likewise opposite the same, on

Longisland, and on Elba island, in the Savannah river, and likewise the jurisdiction to, and over the same be, and the same are hereby ceded to, and vested in the said United States of America."

4. By Act of the legislature of the State of Georgia, approved March 2, 1874 (1874 Ga. Laws, p. 93), the State of Georgia authorized its Governor to grant to the United States tracts of land containing not more than five acres as selected by the United States for the purpose of erecting lighthouse beacons or other buildings. Said act provides in part as follows:

"§1. SECTION I. *Be it enacted, etc.,* That whenever a tract of land, containing not more than five acres, shall be selected by an authorized officer or agent of the United States, for the *bona fide* purpose of erecting thereon a lighthouse, beacon, or buildings connected therewith, and the title to the said land shall be held by the State, then, on application by the said officer or agent to the Governor of this State, the said Executive is hereby authorized to transfer to the United States the title to, and jurisdiction over, said land; . . ."

5. By Act of the legislature of the State of Georgia approved July 29, 1914, the State authorized its Governor to grant to the United States tracts of marsh land not to exceed 600 feet in width and of a length necessary to connect Little Satilla River with Umbrella Creek and to connect Dover Creek with Barley's Cut for the purpose of opening an Inland Waterway.

By Act of the legislature of the State of Georgia approved March 24, 1939 (1939 Georgia Laws, p. 331) the State of Georgia authorized its Governor to grant to the United States perpetual rights and easements over any and all lands

> ". . . including submerged lands, composing a part of the channel rights-of-way, anchorage areas and turning basins as may be required at any time for construction and maintenance of the aforesaid Intracoastal Waterway, . . ."

The authorization to make said grants was specified in said act to be in furtherance of the Intracoastal Waterway authorized by Act of Congress approved June 20, 1938 for the project and upon the conditions specified in House Document 618, 75th Congress, Third Session.

X.

State of South Carolina.

1. The State of South Carolina is one of the original thirteen states of the United States of America. The grant by the King of England of the Colony of the Carolinas out of which the State of South Carolina was formed, is described in Paragraph VII of the First Affirmative Defense hereof.

2. The eastern boundary of the State of South Carolina as defined by Act of its Legislature (Revised Stats., 1873, Part I, Title I, Chap. 1, Sec. 1; Gen. Stats. 1882, Part I, Title I, Chap. 1, Sec. 1; Civil Code 1902 Part I, Title I, Chap. 1, Sec. 1; Civil Code 1912 Part I, Title I, Chap. 1, Sec. 1) is in part as follows:

> ". . . on the east the state is bounded by the Atlantic Ocean, from the mouth of the Savannah River to the north boundary near the mouth of the Little River, including all the islands."

3. The State of South Carolina by Act of its Legislature in the year 1899 granted to the United States submerged lands lying in the Atlantic Ocean at the entrance to Winyah Bay extending out 500 feet into the Atlantic Ocean beyond the line of high water mark, for the construction of jetties thereon by the United States. Said grant provides in part (1942 Code of Laws of South Carolina, Vol. 2, Sec. 2042 (36)) as follows:

> "(36) *Land ceded for Georgetown jetties.*—There is hereby ceded to the United States of America, for the purpose of constructing jetties for the improvement of the bar at the entrance of Winyah Bay, S. C., *any and all rights of the State to the adjacent water-covered territory extending from high-water mark*

in certain lands granted by Bettie Mason Alexander and Edward P. Alexander to the United States of America, by deed bearing date of 17th of September, 1889, and recorded in the office of register of mesne conveyances for Georgetown County, in Book K, pages 692-695, *outward (500) five hundred feet, and also from the jetties to be constructed by the United States outward about five hundred feet in every direction into the Atlantic Ocean and* Winyah Bay, respectively, and to any and all accretions to said territory growing out of the construction of said jetties, or from any other causes; this territory being at present bounded as follows, to wit:" * * *

"*Plat to be Executed and Filed.*—The proper officers of the United States, in charge of said jetties, from time to time shall cause to be executed a plat of the lands which may be required for the purposes aforesaid, and file the same in the office of the secretary of state of this State."

4. The State of South Carolina, by Act of its Legislature in the year 1896, granted to the United States portions of submerged lands in front of the town of Moultrieville which surrounds Sullivan's Island in the County of Charleston, lying around Fort Moultrie Military Reservation. Said grant extended a distance of 100 yards into the sea below low water mark and consisted of three separate parcels. Said grant reads in part (1942 Code of Laws of South Carolina, Sec. 2042 (37)) as follows:

"(37) *Jurisdiction over certain lands on Sullivan's Island given to the United States.*—The right, title and interest of this State to, and the jurisdiction and control of this State over, the following described tracts or parcels of land and *land covered with water, situated in the town of Moultrieville, on Sullivan's*

Island, in the county of Charleston, in this State are hereby granted and ceded to the United States of America as sites for the location, construction and prosecution of works of fortifications and coast defenses, to wit: all that tract or parcel of land, and *land covered with water,* bounded as follows: beginning at the point of intersection of the eastern boundary line of the Fort Moultrie military reservation with the line of the southern side of Beach Avenue, and running thence along the southern side of said Beach Avenue, in an easterly direction, to its intersection with the western side of Sumter Street; thence along the western side of Sumter Street extended, in a southerly direction, *to a point in the sea one hundred yards beyond low-water mark; thence in a westerly direction, following the meanderings or intersections of a line in the sea one hundred yards beyond low-water mark to the eastern boundary line of the Fort Moultrie military* reservation extended and thence along the eastern boundary line of the Fort Moultrie military reservation extended, and along said eastern boundary line, in northerly direction, to the place of beginning. * * *"

5. In the year 1900 the Legislature of the State of South Carolina made a further grant to the United States of submerged lands extending out 100 yards into the Atlantic Ocean in front of the town of Moultrieville and Sullivan's Island. Said grant provided (1942 Code of Laws of South Carolina, Sec. 2042 (38)) in part as follows:

"(38) Same.—Also, the right, title and interest of this State to, and the jurisdiction of this State over, the following described tract or parcels of land, *and land covered with water,* situated in the town of Moultrieville, on Sullivan's Island, in the county of

Charleston, in this State, are hereby granted and ceded to the United States of America as sites for the location, construction, and prosecution of works of fortifications and coast defense, and for the use of the garrison, to wit:

"All that tract and parcel of land, *and land covered with water,* bounded as follows: beginning at a point on the prolongation or extension, in a northerly direction of the westerly line of lot 159, as laid down on the plan of said town of Moultrieville, on the back beach, *one hundred yards beyond high-water line;* * * *"

6. The Legislature of the State of South Carolina made a further grant to the United States of submerged lands lying along and extending 100 yards into the Atlantic Ocean in front of then recently acquired lands of the United States as a part of the Fort Moultrie Military Reservation. (1942 Laws of South Carolina, Section 2042 (41).)

7. In the year 1903 the State of South Carolina made a grant to the United States of large areas of submerged lands lying in the Atlantic Ocean and in inlets thereof. Said grant consisted of a strip 400 feet wide extending between Charleston Harbor and a point opposite McClellandville, a distance in excess of 50 miles, for the purpose of constructing and improving the Inland Waterway between said two points. Said Act provides in part as follows (1942 Code of Laws South Carolina, Section 2042 (42)):

"(42) *Certain lands in Charleston County and lands covered with water.* The right, title and interest of this State to, and the jurisdiction and control of this State over, a strip of land, and land covered with

water, four hundred feet wide and lying two hundred feet on each side of the center line of the route selected by the United States of America for inland waterways between Charleston Harbor and a point opposite McClellandville, is hereby granted and ceded to the United States of America, for the purpose of constructing and improving the said inland waterways between Charleston Harbor and a point opposite the town of McClellandville, in the said Charleston County, and is described as follows, to wit: from the cove back of Sullivan's Island following the deepest water of Sullivan's Island Narrows to the bend next east of the point known as Spanish Fort; thence the route leaves the natural waterway, and a marsh cut is to be made across a long bend; thence along the deepest part of the natural waterway to * * *"

8. In the years 1905, 1906, 1908 and 1916, the legislature of the State of South Carolina made further grants to the United States of tracts of submerged lands adjoining the eastern end of Sullivan's Island in the town of Moultrieville, County of Charleston. (1942 Code of Laws, South Carolina, Sec. 2045 (45, 46, 53, 54).)

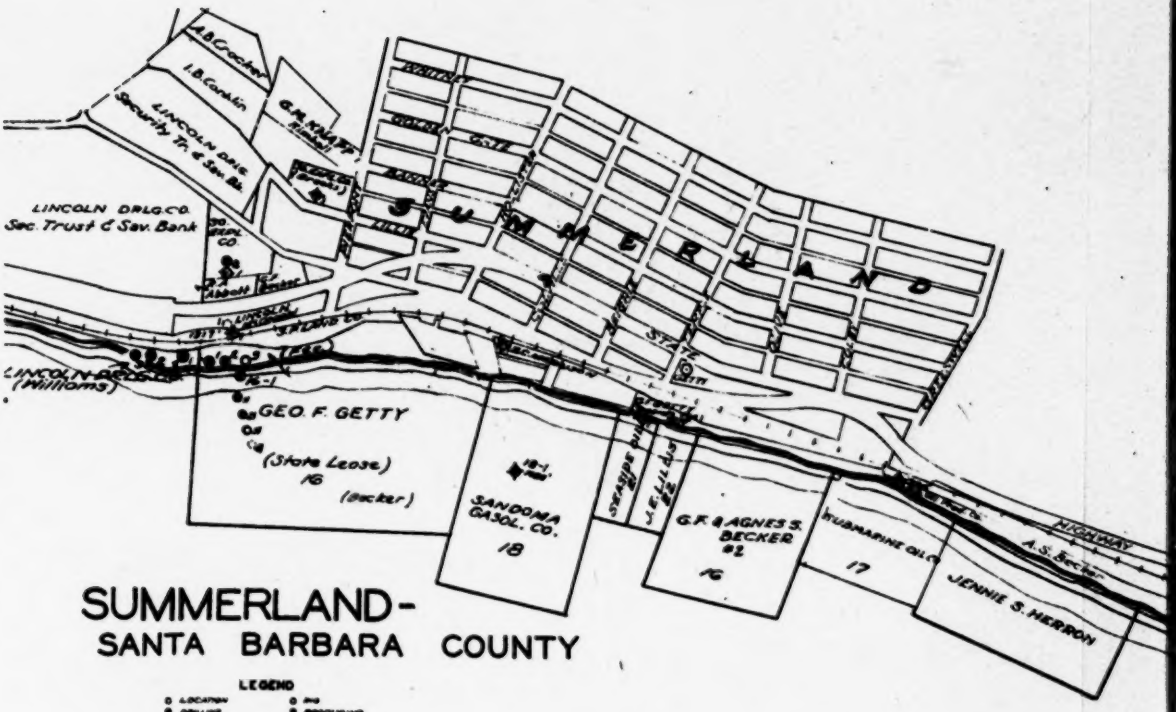
9. By Act of the Legislature of the State of South Carolina in the year 1939 there was granted to the United States tracts of tidelands covered by the water at low tide situated in and around Bull Bay and around designated areas lying in the Atlantic Ocean and in and around Cape Romain and Bird Bank, Charleston County, and in and around the Big and Little Raccoon Keys, which are bounded southward by the Atlantic Ocean and west-

ward by Bull Bay. (1942 Code of Laws of South Caroline, Section 2042 (58).)

10. The Legislature of the State of South Carolina in the year 1941 granted to the United States lands lying between high and low water mark in Beaufort County adjacent to and surrounding Parris Island and an island immediately contiguous to Parris Island which islands were then owned by the United States for naval and military purposes. (1942 Code of Laws, South Carolina, Sec. 2042 (62).)

11. The Legislature of the State of South Carolina in the year 1874 enacted legislation providing for the conveyance to the United States of lands belonging to the State of South Carolina covered by navigable waters, whenever the United States desired the same for sites for lighthouses, beacons, or other aids to navigation. Said Act provides in part (1942 Code of Laws, South Carolina, Section 2047) as follows:

> "Whenever the United States desire to acquire title to land belonging to the State and covered by the navigable waters of the United States, within the limits thereof, for the site of a light house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the Governor of the State is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same; *provided,* no single tract shall contain more than ten (10) acres."



SUMMERLAND-
SANTA BARBARA COUNTY

LEGEND

SCALE: 1 INCH = 1000 FEET

REVISED Oct. 2, 1930

PACIFIC OCEAN

12. A 10-acre parcel of submerged lands on Ft. Ripley Shoal was granted to the United States by the State of South Carolina and the City of Charleston, pursuant to request therefor from the United States in about the year 1876. Ft. Ripley Shoal lies at the entrance of Charleston Harbor in the Atlantic Ocean. In the 1876-77 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 33, it is reported that:

> ". . . *Fort Ripley, Charleston Harbor, South Carolina. Cession of title to and jurisdiction over a submarine site of ten acres on Fort Ripley Shoal, have after considerable delay, been secured from the State of South Carolina and the City of Charleston.* Proposals have been invited for furnishing the metal-work for the foundation. It is expected that the work will be completed during the present season."

XI.

State of North Carolina.

1. The State of North Carolina is one of the original thirteen States of the United States of America. The grant of 1663 from Charles II, King of England of the Colony of Carolina, out of which the State of North Carolina was formed is described in Paragraph VII of the First Affirmative Defense hereof.

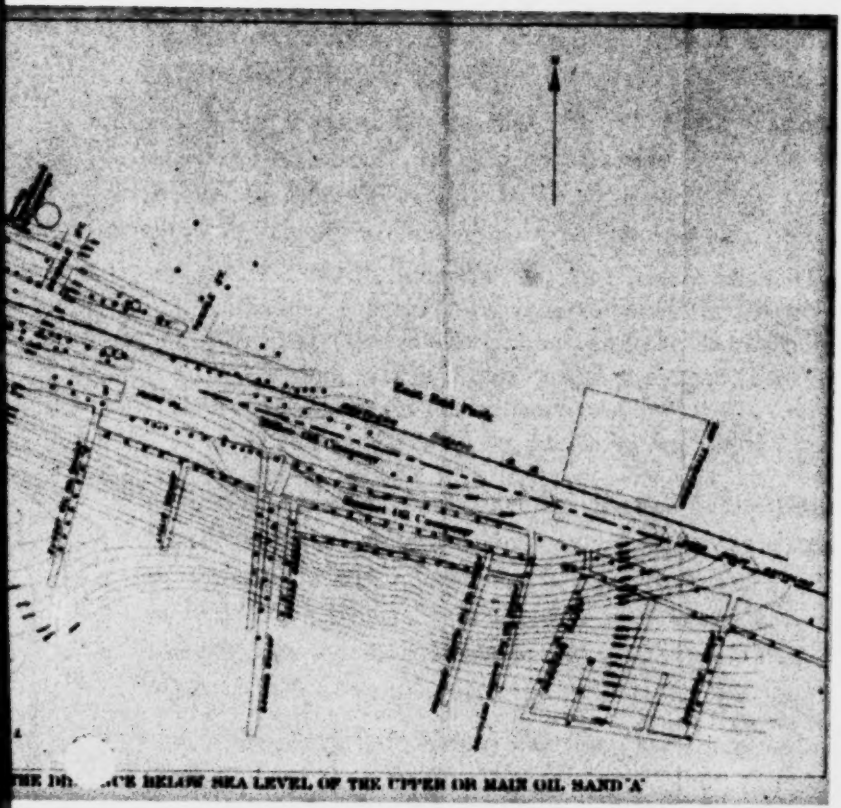
2. The Constitution of the State of North Carolina, ratified December 17, 1776, in its preamble, Section 25, describes the boundaries and declares the ownership of the State of North Carolina, in part, as follows:

> "* * * All the territories, seas, waters and harbors with their appurtenances lying between the line above described (the southerly line) and the southern line of Virginia, which begins on the sea shore in 36° 30′ N Lat. and from thence runs west * * * *are the right and property of the people of this State.*"

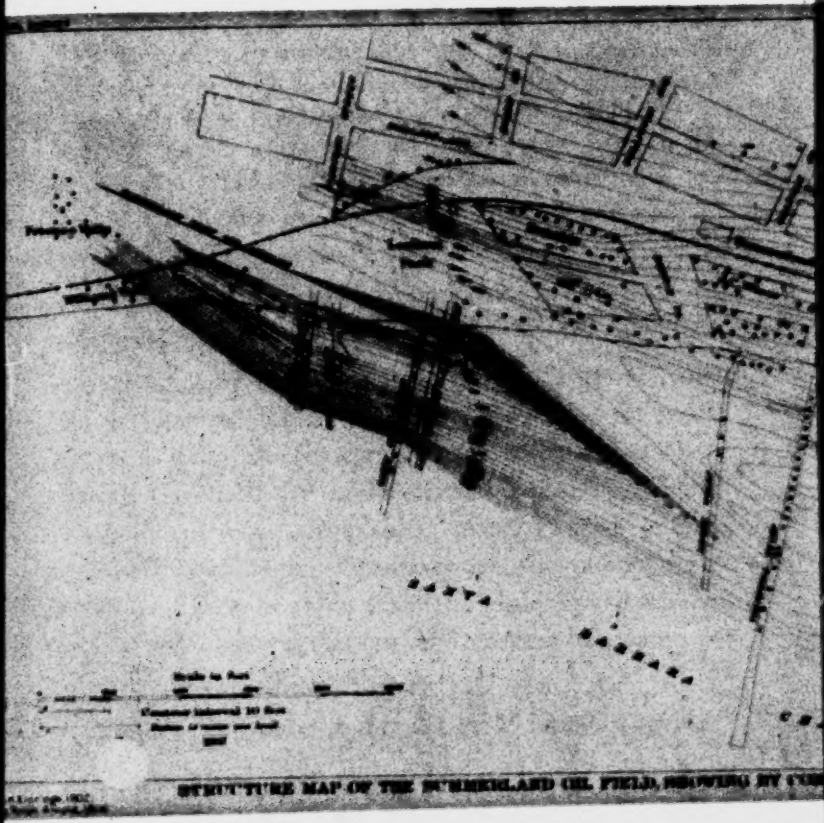
3. The State of North Carolina granted to the United States tide and submerged lands extending to the channel of Cape Fear River, adjoining Government Reservation or "Old Fort Johnston" in the City of Southport, North Carolina, by Act of its Legislature approved March 11, 1901. (1901 Laws of North Carolina, p. 817.)

4. The State of North Carolina has exercised its ownership of all the tide and submerged lands within its exterior boundaries, including those extending into the Atlantic Ocean.

(a) By Act of the Legislature of the State of North Carolina approved February 23, 1897 (1897 Laws of North Carolina, p. 61), the State regulated the oyster



THE DI[illegible]CE BELOW SEA LEVEL OF THE UPPER OR MAIN OIL SAND 'A'



STRUCTURE MAP OF THE SUNNISLAND OIL FIELD, SHOWING BY

industry. By said Act, the State required any resident of said State desiring to take oysters by certain means

> "in any of the waters of this State"

to first apply for and obtain a license from a designated State officer. Said Act specified that the grant by such State officer should be in the form, in part, as follows:

> "I do hereby grant the said ..... a license to take or catch oysters from the public oyster grounds or natural oyster beds of the State."

Said Act also prohibited the use of any implement or tool other than ordinary hand tongs in a designated part of the Atlantic Ocean therein referred to as

> "in that part of Pamlico Sound, north and east of a line drawn from Long Shoal Point to Gull Island."

(b) By Act of the Legislature of the State of North Carolina approved March 21, 1899 (1899 Laws of North Carolina, p. 111), the State regulated the shellfish industry in North Carolina. By said Act, the Board of Shellfish Commissioners was established. Among other things, said Board was required to lay out the public oyster grounds and beds in seven districts. Said Board was required to establish regulations and enforce the same for the inspection of such shellfish

> "as may be caught in the waters of North Carolina."

(c) The Legislature of the State of North Carolina, by Act approved March 6, 1899 (1899 Laws of North Carolina, p. 645), regulated in particular the taking of oysters

> "from the waters of Topsail Sound, Pender County, said State."

(d) By Act of the Legislature of the State of North Carolina, approved March 9, 1903 (1903 Laws of North Carolina, p. 1118), it is provided that by the laws of said State any deed or conveyance of land calling for any river, ocean or any other body of water as a boundary line shall convey all land to the low water mark of said river, ocean or other body of water instead of the high water mark. Section 1 of said Act reads as follows:

> "That all deeds or other conveyances of land calling for any creek, river, sound, ocean or any other body of water as a boundary line or any part of such boundary, shall convey all land to the low water mark of such creek, river, sound, ocean or other water-way instead of to the high water mark."

Said Act is, by its terms, limited to and applies only to the County of New Hanover. Said County of New Hanover adjoins the Atlantic Ocean.

5. Pursuant to the requirements of the Act of Congress approved July 3, 1930 in connection with the construction of the Intracoastal Waterway from Cape Fear River, at Southport, North Carolina, to and beyond the North Carolina-South Carolina State Line, the State of North Carolina by Act of its legislature approved January 16, 1931 (1931 Laws of North Carolina page 3) granted to the United States a right-of-way extending from Cape Fear River at Southport to said state line. Said grant further provides in part:

> "Whenever in the construction of such inland waterway within this State, lands theretofore submerged shall be raised above the water by the deposit of excavated material, the land so formed shall become the property of the United States if within the limits of said inland waterway, right-of-way . . ."

6. By Act approved March 22, 1937, the State of North Carolina authorized its State Department of Conservation and Development to sell, lease or otherwise dispose of mineral deposits "belonging to the State of North Carolina" which may be found in the bottoms of any waters of the State (1937 Public Laws of North Carolina, Chapter 385, page 714) which Act, in Section 1 thereof, reads as follows:

> "Section 1. That the State Department of Conservation and Development be, and it hereby is, fully authorized and empowered to sell, lease, or otherwise dispose of, any and all mineral deposits belonging to the State of North Carolina *which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State;* and the said Department of Conservation and Development is authorized and empowered to convey or lease the right to such person, or persons, as it may, in its discretion, determine to take, dig and remove from such bottoms such mineral deposits found therein belonging to the State of North Carolina as may be sold or leased, or otherwise disposed of to them by the said department. The department is authorized, in its discretion, to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the said department and to the best interest of the State of North Carolina: *Provided, however,* that before any such sale, lease or contract is made the same shall be approved by the Governor and Council of State."

XII.

State of Virginia.

1. The State of Virginia is one of the original thirteen states of the United States of America. The Charters granted to the Colony of Virginia by the King of England commencing in the year 1606 are described in Paragraph VII of the First Affirmative Defense hereof.

In the 1776 Constitution of Virginia, the State maintained ownership of all lands within the boundaries as fixed by King James I in the year 1609, and the Treaty of Peace between the courts of Britain and France in the year 1763. Said Constitution provides (7 Thorpe, American Charters, Constitutions and Organic Laws, Page 3818) in part as follows:

> "The territories, contained within the Charters, erecting the Colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed, to the people of these Colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, except the free navigation and use of the rivers Patomaque and Pokomoke, with the property of the Virginia shores and strands, bordering on either of the said rivers, and all improvements, which have been, or shall be made thereon. The western and northern extent of Virginia shall, in all other respects, stand as fixed by the Charter of King James I, in the year one thousand six hundred and nine, and by the public treaty of peace between the Courts of Britain and France, in the year one thousand seven hundred and sixty-three; unless by act of this Legislature, one or more governments be established westward of the Alleghany mountains.

And no purchases of lands shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly."

2. By Act of the General Assembly of the State of Virginia approved April 16, 1874 (1874 Virginia Laws, Page 226) said State authorized the grant to the United States of title to lands belonging to the State and covered by the navigable waters within the limits thereof, for the site of a lighthouse, beacon, or other aid to navigation in tracts not exceeding 10 acres. Said Act also provided that title so conveyed to the United States should revert to the State of Virginia unless within two years after such conveyance construction was commenced for such lighthouse, beacon or other aid to navigation. Said Act provides in part as follows:

"* * * That whenever the United States desire to acquire title to land belonging to the state, and covered by the navigable waters within the limits thereof, for the site of a light-house, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the site to the United States, and to cede to the said United States jurisdiction over the same: provided, no single tract shall contain more than ten acres."

By Act of the General Assembly of the State of Virginia approved March 31, 1875 (1874-1875 Virginia Laws, Page 429) said Act of April 16, 1874, was amended in certain respects, but the granting clause above quoted remained in full force and effect.

By Act of the General Assembly of the State of Virginia approved March 28, 1936 (1936 Acts of Virginia Assembly, Page 608) further provision was made for granting or leasing to the United States lands under water belonging to the State for sites for lighthouses, beacons or other aids to navigation, providing no single parcel shall contain more than 10 acres.

3. At the request of the United States Government, by Act of the General Assembly of the State of Virginia approved March 12, 1908 (1908 Acts of Virginia Assembly, Page 314) the State of Virginia authorized the conveyance to the United States of title to and jurisdiction over any submerged land adjacent to Federal military and naval reservations in connection with the seacoast defenses of Chesapeake Bay and the waters tributary thereto in parcels not to exceed 100 acres of submerged lands in any one body. Said Act provides in part as follows:

> "* * * That the consent of the Commonwealth is hereby given to the United States government to acquire title to and jurisdiction over any submerged lands belonging to this Commonwealth adjacent to any Federal military or naval reservation, for the purpose of enlarging or improving such reservations, and for the purposes of said government in connection with the seacoast defenses of Chesapeake bay and the waters tributary thereto, so that congress and the authorities of the Federal government shall have lawful power and control over and in the same, as provided in article one, section eight, clause seventeen, of the Constitution of the United States; and whenever the United States desires to *acquire title to such submerged land belonging to the Commonwealth,* and an application has been heretofore, or is hereafter,

made by the secretary of war, the acting secretary of war, or the secretary of the navy, or acting secretary of the navy, or by any other duly authorized official of the United States government for the acquisition by, and the conveyance to, the United States of any such submerged land, such application shall be accompanied by a description of the submerged land, or lands, so required by the United States for its said purposes. When such application and description shall have been presented to the governor of the Commonwealth, ***he is hereby authorized and empowered to convey such submerged land or lands and to cede jurisdiction over the same to the United States*** by deed, duly executed and acknowledged by him; provided, however, that ***the consent and authority herein given shall not apply to more than one hundred acres of submerged land in any one body,*** which may be acquired under the provisions of this act; * * *"

4. By Act of the General Assembly of the State of Virginia approved March 24, 1922 (1922 Acts of Virginia Assembly, Page 657) the State of Virginia gave its consent to the acquisition by the United States in any manner whatever of land, or right or interest therein, situated in the State of Virginia required for military or naval purposes for the Government, and further providing with respect to submerged lands wherever situated within the State of Virginia, as follows:

"* * * and whenever such lands or buildings abut *upon the navigable waters of this State,* such jurisdiction so ceded shall extend to and include *such of the underwater lands adjacent thereto* as lie between the line of low water mark and the bulkhead or pierhead line as now established or as such lines may be hereafter established." (p. 658.)

5. At the request of the United States and in connection with the improvement the tidal waters of Elizabeth River, Virginia, and tributaries thereof, and the reclaiming by the United States of submerged lands therein, by Act of the General Assembly of the State of Virginia approved March 27, 1914 (1914 Acts of Virginia Assembly, Page 669) the State of Virginia granted permission to the United States to place a bulkhead around Craney Island, in Norfolk County, Virginia, beginning at the western end of said Island, and continuing northerly into the waters of the Elizabeth River, for a distance not exceeding one thousand yards, and thereafter to deposit behind said bulkhead materials dredged from the harbors of Norfolk and Portsmouth, and from the Elizabeth River, and enacted that lands so made thereby should thereafter be the property of the United States. Said Act concludes with Section 2, which reads as follows:

> "Nothing herein contained shall be held or construed to grant to the United States any property, or waterfront, or flats in front of the said Craney Island, or near it, *except what belongs to the State of Virginia,* and the said grant herein made shall be subject to all prior grants by the State of Virginia." (p. 670.)

6. By Act of the General Assembly of the State of Virginia approved March 16, 1918 (1918 Acts of Virginia Assembly, Page 568) in ceding jurisdiction to the United States over lands acquired by the United States in

any manner for military or naval purposes, said General Assembly provided in part as follows:

> "* * * and whenever such lands or buildings abut *upon the navigable waters of this State,* such jurisdiction so ceded shall extend to and include *such of the underwater lands* adjacent thereto as lie between the line of low water mark and the bulkhead or pierhead line as now established or as such lines may be hereafter established."

7. This Honorable Court has declared and decided that the State of Virginia owns the beds and soils underlying all navigable waters within the boundaries of said State. In *McCready v. Commonwealth of Virginia* (1877) 94 U. S. 391, 24 L. Ed. 248, in upholding the validity of an Act of the General Assembly of the State of Virginia granting to citizens of Virginia the exclusive right to cultivate and produce oysters under waters within the boundaries of said State, this court stated in part that:

> "The principle has long been settled in this court, that *each State owns the beds of all tidewaters within its jurisdiction,* unless they have been granted away. * * * In like manner, the States own the tidewaters themselves, and the fish in them, so far as they are capable of ownership while running. For this purpose the State represents its People, and the ownership is that of the People in their united sovereignty. * * *
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> * * * * * * *
>
> "* * * *Virginia, owing land under water* adapted to the propagation and improvement of oysters, has seen fit to grant the exclusive use of it for that purpose to the citizens of the State. * * *"

8. A parcel of submerged land on Killick Shoal was granted by the State of Virginia to the United States by deed delivered in January 1885, at the request of the United States. Said Killick Shoal lies in Chincoteague Bay off the coast of Virginia. The 1884-85 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 42, states, in part, as follows:

> ". . . ***Killick Shoal, Virginia.***— The site for this light-house, selected in August, 1884, is on the outer end of the shoal on the north side of the channel running through it, and about 3⅛ miles from Assateague light. The water is a little less than 4 feet deep at mean low water. *A deed for the site was received from the Governor of Virginia in January, 1885.* Borings were made on the site to a depth of 17 feet, which showed the bottom to be of sand and clay mixed. Plans for the structure have been prepared."

9. A 5-acre parcel of submerged lands lying on the southeasterly side of the mouth of the Potomac River on the west side of Chesapeake Bay was granted by the State of Virginia to the United States by deed dated October 18, 1876. The Attorney General of the United States rendered his written opinion dated November 17, 1876, approving the title of the State of Virginia to said submerged lands thus granted to the United States.

XIII.

State of Maryland.

1. The State of Maryland is one of the original thirteen states of the United States of America. The charter for the Colony of Maryland granted by the King of England to Lord Baltimore is described in Paragraph VII of the First Affirmative Defense hereof. The State of Maryland, upon its formation in the year 1776, succeeded to the ownership of the colony of Maryland within the boundaries as established by said charter from the King of England, and as subsequently defined by agreement with neighboring states.

2. By Act of the Legislature of the State of Maryland approved April 1, 1872 (1872 Maryland Laws, p. 665), said State granted to the United States a large tract of submerged lands adjoining the site of the Naval School at Annapolis, extending along the entire front of said site to a maximum distance of approximately 200 feet into the water adjoining thereto.

3. By Act of the Legislature of the State of Maryland approved April 6, 1874 (1874 Maryland Laws, p. 274), said State authorized the grant to the United States of any land covered by the navigable waters of said State in not exceeding 5-acre parcels on which a lighthouse, beacon, or other aid to navigation has been built or is proposed to be built. Said Act provides, in part, in Section 2 thereof, as follows:

> "That with respect to land covered by the navigable waters within the limits of the State, and on which a light-house, beacon or other aids to navigation has

been built, or is about to be built, the Governor of the State, on application of an authorized agent of the United States, setting forth a description of the site required, is authorized and empowered to convey the title to the United States, and to cede jurisdiction over the same; provided no single tract shall contain more than five acres."

4. By Act of the Legislature of the State of Maryland, approved April 9, 1920 (1920 Laws of Maryland, p. 1091), the State of Maryland granted permission to the United States to install and use a calibration range in the mouth of the Potomac River in the vicinity of Point Lookout Light and covering a rectangular area of submerged lands approximately 2600 yds. by 2000 yds. in dimensions in the Atlantic Ocean and mouth of the Potomac River.

5. This Honorable Court has held that the State of Maryland is the owner of all the beds and soils underlying the navigable waters within the boundaries of said State.

In *Smith v. State of Maryland* (1855), 59 U. S. (18 Howard) 71, 74-75, this Court upheld the validity of the Act of the Legislature of the State of Maryland (1833 Laws of Maryland, Chapter 254), making it unlawful for any person to take oysters

"in any of the waters of this State"

by means of certain described instruments. Plaintiff in error Smith was engaged in operating a vessel and taking

oysters from Chesapeake Bay in violation of said Act. The Court there said, in part, as follows:

> "Whatever soil below low-water mark is the subject of exclusive propriety and ownership, belongs to the State on whose maritime border, and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the declaration of independence. Pollard's Lessee v. Hagan, 3 How. 212; Martin v. Waddell, 16 Pet. 367; Den v. The Jersey Co., 15 How. 426.
>
> "But this soil is held by the State, not only subject to, but in some sense in trust for, the enjoyment of certain public rights, among which is the common liberty of taking fish, as well shellfish as floating fish. Martin v. Waddell; Den v. Jersey Co.; Corfield v. Coryell, 4 Wash. R. 376; Fleet v. Hagemen, 14 Wend. 42; Arnold v. Munday, 1 Halst. 1; Parker v. Cutler Milldam Corporation, 2 Appleton (Me.) R. 353; Peck v. Lockwood, 5 Day, 22; Weston *et al.* v. Sampson *et al.*, 8 Cush. 347. The State holds the propriety of this soil for the conservation of the public rights of fishery thereon, and may regulate the modes of that enjoyment so as to prevent the destruction of the fishery. In other words, it may forbid all such acts as would render the public right less valuable, or destroy it altogether. This power results from the ownership of the soil, from the legislative jurisdiction of the State over it, and from its duty to preserve unimpaired those public uses for which the soil is held."

6. A parcel of submerged lands on Sharkfin Shoal between Clay Island and Bloodsworth Island, Chesapeake Bay, was granted to the United States by the State of Maryland in December, 1892, at the request of the United States. In the 1890-92 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 93, it is reported as follows:

> ". . . Sharkfin Shoal, between Clay and Bloodsworth islands, Tangier Sound, Chesapeake Bay, Maryland. The erection of this light-house was not commenced as soon as anticipated in the last annual report, owing to the need of boring to show the feasibility of placing the light farther south that it might give more aid to mariners. A proper site was found 2 miles southwesterly from Clay Island light. Proper measures were taken to *secure title to this site and cession of jurisdiction from the State of Maryland.* This was not done until December, too late in the season to begin work at the site . . ."

7. A 5-acre parcel of submerged lands lying in the Chesapeake Bay, State of Maryland, was granted by the State of Maryland to the United States by deed dated April 21, 1883, pursuant to said Act of the Legislature of the State of Maryland approved April 16, 1874, above quoted. The Attorney General of the United States rendered his written opinion dated June 9, 1883, finding good title in the United States pursuant to said deed from the State of Maryland.

XIV.

State of New Jersey.

1. The State of New Jersey is one of the original thirteen States of the United States of America. The territory of the said State was a portion of the lands granted by Charles II, King of England, to his brother James, Duke of York, on March 12, 1664, and was regranted to the Duke of York in the year 1674. The Duke of York sold and granted to Lord John Berkeley and Sir George Carteret that part of the lands theretofore granted to the Duke of York called New Jersey and described in part as

> "* * * extending eastward from the Delaware bay and river to the main ocean and Hudson's river, and northward from Cape May to a line drawn from the northermost branch of the Delaware, which is 41°40′ N Lat. to the Hudson river in 41° N Lat."

Said grant was later surrendered to the King of England in the year 1702. The State of New Jersey succeeded to the title of all lands within the Colony of New Jersey upon obtaining its independence in the year 1776.

2. By Act of the Legislature of the State of New Jersey approved March 12, 1890 (1890 Laws of New Jersey, p. 55), the said State granted to the United States submerged lands in front of Petty's Island. Said Act reads, in part, as follows:

> "Whereas, The government of the United States of America has undertaken and is about to make improvements in the harbor of Philadelphia, requiring excavation and removal of soil in order to deepen the waters of said harbor in front of Petty's island in the Delaware river; *and whereas, the lands below high-water mark in front of Petty's island and in the bed*

of the Delaware river are the lands of the state of New Jersey, and the deepening of said water cannot be effected without excavation and removal of considerable portion of the said land; *and whereas,* the improvement of the waters of said harbor will be a great benefit to the people of this state; therefore,

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey,* That the lands under water in the Delaware river below high-water mark, in front of Petty's island, belonging to this state, be and the same are hereby ceded to the United States of America so far as the same may be necessary to be used or taken in the making of the improvements now being or about to be made by the government of the United States of America in the harbor of Philadelphia; *provided,* that this act shall not be construed so as to affect the right to or the amount of damages claimed by any owner of the upland by reason of his adjacency to tide-water."

3. At the request of the United States, the State of New Jersey authorized its governor to grant to the United States title to certain submerged lands lying in the Delaware River between an island then being formed with dredged materials, known as Dan Baker, and Stony Point. Said statute provides that

> "this tract of submerged land covers an area of one thousand five hundred forty-one (1541) acres, more or less."

By Act of the Legislature of the State of New Jersey approved March 29, 1907 (1907 Laws of New Jersey, p. 44), said State authorized its Governor to grant to the United States submerged lands in the Delaware

River for the purpose of aiding the improvement thereof. Said Act reads, in part, as follows:

> "WHEREAS, The Federal Government is engaged in dredging and otherwise improving the bed of the Delaware river under authority of Congress, and in the course of such improvement it has been found necessary for the government to construct a bulkhead around portions of what are known as 'Dan Baker' and 'Stony Point' shoals so as to form a basin within which to deposit the material dredged from the channel; and
>
> "WHEREAS, When completed this area will form an island which it is thought important to have in the possession and under the control of the Federal Government; and
>
> "WHEREAS, The Government of the United States desires to acquire title to that portion of the river bottom of the Delaware river in which the aforesaid island is to be constructed; therefore,
>
> BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*
>
> "1. The Governor of this State be and he hereby is authorized and directed to cede jurisdiction over and convey to the United States all the right, title and interest of this State in and to certain submerged land in the Delaware river, between the States of Delaware and New Jersey, the location whereof with reference to the United States Engineer Department triangulation of the said river, is more particularly described as follows: . . ."

4. By Act of 1864 Legislature of the State of New Jersey (1864 Laws of New Jersey, page 681), as amended from time to time (4 Compiled Statutes of New Jersey 1709-1910 page 4382 *et seq.*), the State of New Jersey

made detailed provision for protecting the title of said State in and to lands under the waters of the Bay of Newark and the Hudson River and elsewhere within said state. Said act is entitled:

> "An act to ascertain the rights of the State and of the riparian owners in the lands lying under the Bay of Newark, the Hudson River and elsewhere within the State."

The preamble of said Act reads as follows:

> *"Preamble.*—Whereas, it is represented to the legislature of the state that grants of rights to occupy land under the waters of the bay of New York and the Hudson river, and elsewhere within the state have been made and are liable to be made, without sufficient information of the rights of the state and of the riparian owners in the same therefore, with the view of obtaining the proper information to enable the legislature to protect the rights of the state."

5. This Honorable Court has declared and decided that the State of New Jersey is the owner of all the beds and soils underlying all navigable waters within the boundaries of said state.

Martin v. Waddell (1842), 16 Peters 366, involved title to one hundred acres of land lying "beneath the navigable waters of the Raritan River and Bay." The principal matter in dispute was the right to the oyster fishery therein. Plaintiff in error derived his title under the State of New Jersey. Chief Justice Taney, for the Court, held that the grant from the King of England to the Duke

of York and from the Duke of York to the proprietors of New Jersey granted the soils under the navigable waters saying:

> "And in the judgment of the court, the land under the navigable waters passed to the grantee as one of the royalties incident to the powers of government; and were to be held by him in the same manner, and for the same purposes that the navigable waters of England, and the soils under them, are held by the crown."

The opinion then holds that when the proprietors of New Jersey surrendered their letters patent back to the Queen of England in the year 1702, the title to the lands under the navigable waters of New Jersey revested in the Crown, and upon the Revolution said lands under the navigable waters vested in the People of the State of New Jersey, the court saying that:

> "And when the people of New Jersey took possession of the reins of government, and took into their own hands the powers of sovereignty, the prerogatives and regalities which before belonged either to the crown or the Parliament, became immediately and rightfully vested in the State."

XV.

State of Delaware.

1. The State of Delaware is one of the original thirteen states of the United States of America. The State of Delaware is a part of the territory that was sold to William Penn on August 24, 1682, by the Duke of York under grants to him from his brother, Charles II, King of England, of 1664 and 1674 described in Paragraph VII of the First Affirmative Defense hereof. Said territory was known as the "Three Lower Counties" of Pennsylvania until a separate Legislature therefor was established in the year 1704. The colony of Maryland also claimed all the territory now forming the State of Delaware under the Charter of 1632 from Charles I, King of England, to Lord Baltimore described in Paragraph VII of the First Affirmative Defense hereof. The dispute over the boundaries of this territory was finally settled upon the approval of the Commissioners' Report, dated November 9, 1768, for a line approximately 70 miles long across the peninsula from Fenwick's Island, Cape Henlopen (or Cape James) to Chesapeake Bay, the eastern end of said line being the main coast of the Atlantic Ocean. (Message of Governor of Maryland transmitting Reports in Relation to the Boundary Lines of Maryland, Pennsylvania and Delaware (Washington 1850), page 37; Message of Governor of Pennsylvania transmitting Report of Joint Commissioners (Harrisburg 1850), page 17. John W. Houston, History of the Boundaries of Delaware (Washington 1879, II

Papers, Historical Society of Delaware). The eastern boundary of the State of Delaware in the Delaware River and Bay and adjoining the State of New Jersey was the subject of a long controversy with the latter state, finally decided by decision of this Honorable Court in the year 1934 in *New Jersey v. Delaware* 294 U. S. 361, 51 S. Ct. 407, 78 L. Ed. 847; *Delaware Laws* (1935), Chapter 119, p. 412.

2. The State of Delaware, by Act of its Legislature approved January 26, 1871 (14 Laws of Delaware, p. 247), made a grant to the United States of submerged lands lying at the entrance of Delaware Bay and the Atlantic Ocean. Said Act reads, in part, as follows:

> "Section 1. Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That Edward D. Hitchens, William D. Waples and Dr. David H. Houston, of Sussex county, be and they are hereby appointed commissioners on the part of the State of Delaware, and they, or a majority of them, are hereby authorized and empowered, in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of War, to locate and fix the boundaries of any quantity of land belonging to the State of Delaware, *not exceeding five hundred feet front and one thousand feet deep, from low water mark,* situated and lying on the Delaware Bay, south-east of the Old Mole, usually called the Government Mole, and between said Old Mole and the point of Cape Henlopen, and the lands belonging

to the State of Delaware, located and designated by the boundaries to be fixed and determined by the commissioners aforesaid in conjunction with the agent or person to be appointed as aforesaid by the President of the United States, or by the Secretary of War, *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same, is hereby ceded to and vested in the United States in perpetuity;* and that a plot of the land so located and hereby ceded as aforesaid be made and recorded in the Recorder's office in and for Sussex county; * * *"

3. The State of Delaware, by Act of its Legislature approved February 5, 1873, made a further grant to the United States in connection with the construction by the United States of breakwaters at the harbor entrance and likewise granted to the United States submerged lands at the end of Reedy Island in Newcastle County, Delaware. Said Act (Laws of Delaware, Vol. 14, 1873, p. *324*) provides as follows:

"Section 1. Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met, That William D. Waples, N. W. Hickman and Dr. D. H. Houston, of Sussex county, be and they are hereby appointed commissioners on the part of the State of Delaware, and they, or a majority of them, are hereby authorized and empowered, in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of War, to locate and fix the boundaries of any quantity of land belonging to the State

of Delaware, *not exceeding two thousand one hundred feet front and three thousand feet deep, from low water mark situated and lying on the Delaware Bay,* southeast of the old mole, usually called the Government Mole, and between said old mole and the point of Cape Henlopen, and the land belonging to the State of Delaware, located and designated by the boundaries to be fixed and determined by the commissioners aforesaid in conjunction with the agent or person to be appointed as aforesaid by the President of the United States or by the Secretary of War, *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same is hereby ceded to and vested in the United States in perpetuity;* * * *"

"Section 2. Be it further enacted by the authority aforesaid, That the above cession of land and jurisdiction hereby made is upon the express condition that defenses, to be built by the United States at the Delaware Breakwater harbor, shall be constructed thereon.

"Section 3. Be it further enacted by the authority aforesaid, That the north end of Reedy Island, in New Castle county, Delaware, *not to exceed fifty acres,* and also the ice harbor constructed on the east side thereof, be and the same are hereby ceded to the United States; *and all claim, title and right of soil and jurisdiction of the State of Delaware in, to, or over the same is hereby ceded to and vested in the United States in perpetuity;* and that a plot of the land so located and hereby ceded as aforesaid be made

and recorded in the office of the Recorder in and for New Castle county; * * *"

4. The State of Delaware, by Act of its Legislature approved April 12, 1899, granted to the United States submerged lands lying at the entrance of Delaware Bay and the Atlantic Ocean at the point of Cape Henlopen. Said Act (Laws of Delaware, 1889, p. 549) reads, in part, as follows:

"Section 1. That Hiram R. Burton, David L. Mustard, and Franklin C. Maull, of Sussex County, be, and they are hereby appointed Commissioners on the part of the State of Delaware, and they or a majority of them are hereby authorized and empowered in conjunction with any agent or person appointed by the President of the United States, or by the Secretary of the Treasury, to locate and fix the boundaries of any quantity of land belonging to the State of Delaware, *not exceeding fifteen hundred feet front, and twelve hundred feet deep from low water mark,* situate and lying on the Delaware Bay, between the United States Government Iron Pier, and the point of Cape Henlopen; and the land so located and designated by the aforesaid Commissioners, in conjunction with the agent or person appointed as aforesaid by the President of the United States or the Secretary of the Treasury, *and all claim, title and right of soil and jurisdiction of the State of Delaware into or over the same, are hereby ceded to and vested in the United States in perpetuity;* that a plot of the land so located and hereby ceded as aforesaid be made and recorded in the office of the Recorder of Deeds, in and for Sussex County; . . ."

XVI.

State of Pennsylvania.

1. The State of Pennsylvania is one of the original thirteen States of the United States of America.

By Act of the Legislature of the State of Pennsylvania passed November 27, 1779, commonly known as "The Pennsylvania Divestiture Act" (2 Smith Laws 479) said State enacted and declared that all title of the Proprietaries of Pennsylvania existing on July 4, 1776, in and to the soil and land contained within the limits of the former Province of Pennsylvania granted by Letters Patent from Charles II, King of England, are thereby vested in the Commonwealth of Pennsylvania. Said Act reads in part as follows:

> "* * * That all and every the estates, right, title, interest, property, claim and demand of the heirs and devisees and grantees, or other claiming as Proprietaries of Pennsylvania, whereof they or either of them stood seized, or to which they or any of them were entitled, or which to them were deemed to belong, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, of, in or to the soil and land contained within the limits of the said late province, now state of Pennsylvania, or any part thereof, together with the royalties, franchises, lordships, and all other the hereditaments and premises comprised, mentioned and granted in the same charter, or letters patent of the said King Charles the second (except as hereinafter is excepted) shall be, and they are hereby vested in the commonwealth of Pennsylvania, for the use and benefit of the citizens thereof; freed and discharged, and absolutely acquitted, exempted and indemnified, of, from and against all estates, uses, trusts, * * *"

The northwesterly boundary of the State of Pennsylvania extends along and to the middle of Lake Erie, one of the Great Lakes; and its easterly boundary is in and along the Delaware River.

2. The State of Pennsylvania owns and has claimed to own to the center of Lake Erie coincident with the international boundary between United States and Canada, and the center of Lake Erie has been recognized as such boundary by Acts of Congress (Act of Congress of August 19, 1890, Chapter 804, 26 Stat. 329; Act of Congress of June 15, 1836, 5 Stat. 49).

This Honorable Court has held that the Great Lakes have all the characteristics of the open sea.

3. The State of Pennsylvania has granted to the United States ownership and jurisdiction, by Acts of the Legislature of the State of Pennsylvania approved February 10, 1863, and approved April 4, 1866, over all "League Islands," together with the submerged lands in the tidal water basin or channel between said Island and the mainland lying in and between the Delaware and Schuylkill Rivers for the purposes of a navy yard.

By an Act of the Legislature of the State of Pennsylvania approved March 29, 1827, the State of Pennsylvania had granted to the United States all title of the State in the area then occupied by the United States as a navy yard in the County of Pennsylvania bounded on the east side by the Delaware River.

4. The State of Pennsylvania has exercised its ownership of the bed and soil underlying Lake Erie within the boundaries of the State of Pennsylvania extending out to the middle of said Lake.

(a) The State of Pennsylvania by Act of its Legislature approved June 25, 1913 (Pennsylvania Administrative Code Section 1808) has authorized its Water and Power Resources Board to grant permits and licenses to dredge and remove sand and gravel from the bed of Lake Erie.

(b) Pursuant to said Act said Board has heretofore granted permits for the dredging and extraction of sand and gravel from under said Lake.

(c) Said Board on September 6, 1929, granted its Permit No. 6167A to Erie Sand & Gravel Company, consenting to the dredging of sand and gravel by said permittee in and under three described parcels of submerged lands. Parcel A contained 280 acres; Parcel B contained 750 acres; and Parcel C contained approximately 14 square miles.

(d) Another Permit was issued by said Board to Kelley Island Company under date of January 22, 1930, for dredging sand and gravel in Lake Erie.

(e) A third Permit was granted by said Board to Paasch Brothers dated August 26, 1930, to dredge sand and gravel from under Lake Erie.

Said permittees have applied for and been granted Permits from the United States War Department to carry on their operations for dredging and extracting sand and gravel from, in and under Lake Erie within the State of Pennsylvania.

XVII.

State of New York.

1. The State of New York is one of the original thirteen states of the United States of America.

2. In the year 1779 the Legislature of the State of New York (1779 Laws of New York, Chapter 25) declared the State of New York to be the owner of all lands then vested in the Crown of Great Britain, providing in part that:

> "That the absolute property of all messuages, lands, tenements, and hereditaments * * * and all right and title to the same, which next and immediately before the 9th day of July, 1776, did vest in, or belong, or was due to the Crown of Great Britain be, and the same and each and every of them hereby are declared to be, and ever since the 9th day of July, 1776, to have been, and forever after shall be vested in the people of this state, in whom the sovereignity and seigniory thereof, are and were united and vested, on and from the said 9th day of July, 1776."

In 1828 the Legislature of the State of New York enacted (Part II, Rev. Stat. 1828, Chapter 1, Title 1, Section 1):

> "That the people of this state in their right of sovereignity are deemed to possess the original and ultimate property in and to all lands within the state."

In the 1846 Constitution of the State of New York, Article I, Section 11, it is provided in part that:

> "The People of this State in their right of sovereignity are deemed to possess the original and ultimate property in and to all lands within the juris-

diction of this State; * * *." (Also contained in the 1894 Constitution of New York, Article I, Section 10.)

Concerning the foregoing declarations made by the Legislature and found in the Constitution of the State of New York, the Court of Appeals of that state said, in *The People v. Trinity Church* (1860), 22 N. Y. 44, in part, that:

> "When by the Revolution the Colony of New York became separated from the Crown of Great Britain and a republican government was formed, the People succeeded the King in the ownership of all lands within the State which had not already been granted away, and they became from thenceforth the source of all private titles."

3. At the request of the United States, the State of New York has made grants to the United States of tide and submerged lands owned by the State of New York in and around uplands owned by the United States upon Governor's Island, Bedloe's (Liberty) Island, Ellis Island, and David's Island, and Fort Lafayette, Fort Hamilton, Fort Wadsworth (or Tompkins) and Fort Schuyler. By Act of the Legislature of the State of New York passed May 7, 1880 (1880 Laws of New York, Vol. 1, Chap. 196) it is provided in part:

> "All the right and title of the State of New York to the following described *parcels of land covered with water,* adjacent and contiguous to the lands of the United States, in the harbor of New York, at Governor's, Bedloe's, Ellis' and David's Islands, and Forts Lafayette, Hamilton, Wadsworth (or Tompkins), and Schuyler, and jurisdiction over the same

are hereby released and ceded to the United States under article one, section eight, paragraph seventeen of the constitution, for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances. *Said lands covered with water* are bounded and described as follows:

AT GOVERNOR'S ISLAND.

"Beginning at a point fifty feet from the head of the main wooden dock, commonly known as the quartermaster's dock, and on a line with the north face of said dock, * * *

AT BEDLOE'S ISLAND.

"Beginning at a point fifty feet from the head of the main dock or wharf and on a line with the south-west face of said dock; running thence south forty-one degrees thirteen minutes west for four hundred and twenty-four feet; * * *

AT ELLIS' ISLAND.

"Beginning at a point fifty feet from the head of the east dock and on a line with the north face of said dock; running thence * * *

AT DAVID'S ISLAND.

"Beginning at a point one hundred and fifty feet from the head of the new dock (commonly called the coal dock), and on a line with the north-west face of said dock; running thence * * *

AT FORT LAFAYETTE.

"Beginning at a point ninety-two feet west from the prolongation of the west face of the fort, * * *

AT FORT HAMILTON.

"Beginning at a point at high-water mark on the western boundary line of the United States land there situate; running thence * * *

AT FORT WADSWORTH (OR TOMPKINS) ON STATEN ISLAND.

"Beginning at a point at high-water mark on the northern boundary line of the United States land there situate; running thence * * *

AT FORT SCHUYLER.

"Beginning at a point on the boundary line of the land of the United States at high-water mark on the north shore of Throgg's Neck; running thence * * * provided that jurisdiction hereby ceded shall continue no longer than the United States shall own said lands at Governor's, Bedloe's, Ellis, and David's Islands, and at Forts Lafayette, Hamilton, Wadsworth and Schuyler, and the adjacent lands covered with water, herein described and hereby released; * * *

"The commissioners of the land office are hereby authorized and directed to issue a patent of said released lands to the United States." (pp. 315-318.)

4. By Act of the Legislature of the State of New York passed March 20, 1880 (1880 Laws of New York, Vol. 1, Chap. 69) the State of New York ceded jurisdiction to the United States over a submarine site for a lighthouse to be built at the Great Beds, and in said Act the State of New York declared its ownership of the lands under water, providing in part as follows:

"Jurisdiction is hereby ceded to the United States over a site for a light-house, to be built on the Great Beds in Raritan bay, *on lands under water belonging to this State.* The site on the edge, or south-eastern extremity of the shoal known as the Great Beds, which makes out from the New Jersey shore at the intersection of the Raritan river and Perth Amboy channels, and is embraced within a circle seven hun-

dred feet in diameter, the center point of which is distant three-fourths of a mile in a course south twenty-two degrees west from the south-west gable of the dwelling-house of B. C. Butler, at Ward's Point, on the southerly shore of Staten Island, and contains *eight and eighty-three one hundredths of an acre in area,* as shown on a map and description which have been filed in the office of the secretary of State of this State." (p. 175.)

5. The United States, through its Treasury Depart ment and the United States Light-house Board on or about April 20, 1874, filed sketches or maps of twenty submerged sites with the Secretary of State of the State of New York in connection with the request by the United States that the State of New York adopt legislation ceding jurisdiction for lighthouse purposes over said twenty parcels of submerged lands. On May 11, 1874, the Legislature of the State of New York passed an Act (1874 N. Y. Laws, Chapter 432, p. 551), ceding jurisdiction to the United States over said twenty parcels of submerged lands, sketches and maps of which had theretofore been filed by the United States with the Secretary of State of the State of New York on April 20, 1874, as aforesaid. Said Act provided, in part, as follows:

"Also, *for the lands lying under water, and known as sub-marine sites,* sketches and maps of which by metes and bounds have been furnished by the United States were filed in the office of Secretary of State on the twentieth day of April, in the year one thousand eight hundred and seventy-four, viz.: * * *

"No. 6. Harts Island, situated in Long Island sound, Westchester County, New York, at the south end of Hart Island, under water and beyond low

water mark containing three acres and seventy-five hundredths of an acre. [Harts Island Lighthouse is situated southeast of the southernmost tip of Harts Island on the northwest side of the channel in the western portion of Long Island Sound.]

"No. 7. Execution Rocks, Long Island sound, one hundred feet in diameter, containing less than an acre, situated seven-eighths of one mile north of Sands Point light, and five miles to the northeast of Fort Schuyler. [Execution Rocks Lighthouse is situated at approximately the center of the channel in the western portion of Long Island Sound.]

"No. 8. Robin's Reef, New York harbor, containing an area of less than one acre. [Robins Reef Lighthouse is situated in Upper Bay, New York Harbor, on the west side of the channel]

"No. 9. Long-beach bar, entrance to Greenport harbor, Long Island, Suffolk county, New York, containing an area of less than one acre. [Greenport Lighthouse is situated on the north side of the channel running from Gardiners Bay to Greenport Harbor.]

"No. 10. Stratford shoal, Long Island sound, New York, containing an area of less than one acre. [Stratford Shoal Lighthouse is situated approximately in the center of the channel and slightly toward the western end of Long Island Sound.]

"No. 11. Race Rock, off Fisher's Island point, at the western entrance to Fisher's Island sound, Suffolk county, New York, containing an area of less than one acre. [Race Rock Lighthouse is situated approximately one and one-half miles southwest of Race Point, Fisher's Island, on the north side of the channel running between Block Island Sound and Long Island Sound.]

"No. 12. Hudson city, middle ground, Hudson river, opposite the city of Hudson, county of Columbia, New York, containing an area of less than one acre.

"No. 13. Saugerties, on the mud flat on the north side of entrance to the Saugerties creek, county of Ulster, New York, containing an area of less than one acre.

"No. 14. Roah Hook, on the west side of Hudson river, behind the angle of the dyke, south of Roah Hook, New York, containing an area of less than one acre.

"Parada Hook, on point of rocks, lower end of dyke, on west side of the Hudson river, New York, containing an area of less than one acre.

"No. 16. Nine-mile tree, Castleton behind the center of dyke, on the east side of the Hudson river, New York, containing an area of less than one acre.

"No. 17. Cross-over dyke, on north end of stone dyke, below Albany, on the west side of the Hudson river, New York, containing an area of less than one acre.

"No. 18. Cuyler's dyke, on the east side of the Hudson river, on the lower or south end of dyke, near Albany, New York, containing an area of less than one acre.

"No. 19. Van Wie's point, on the south end of the stone dyke, below Albany, New York, on west side of the Hudson river, containing an area of less than one acre.

"No. 20. Potter's, or Sea-flower reef, Fisher's Island sound, Suffolk county, New York, about one and a half miles north of Fisher's Island, containing

an area of less than one acre. [Sea-flower Reef Lighthouse is situated in the center of the channel at the western end of Fisher's Island Sound.]

"No. 21. Sand spit, entrance to Sag Harbor, Suffolk county, Long Island sound, New York, containing an area of less than one acre. [Sag Harbor Lighthouse is situated on the east side of the entrance channel to Sag Harbor from Gardiners Bay.]

"No. 22. Branford reef, abreast of Branford harbor, Long Island sound, New York, containing an area of less than one acre. [Branford Reef Lighthouse is situated on the north side of the channel at about the center of Long Island Sound and lies approximately 6 miles east of the New Haven Breakwater Lighthouse.]

"No. 23. Romer shoal, off Sandy hook, entrance to New York harbor, containing an area of less than one acre. [Romer Shoal Lighthouse is situated on the southwest side of Ambrose Channel in the New York Lower Bay and is approximately 1⅓ miles inside a line drawn from the northernmost point of Sandy Hook to the southernmost point of Rockaway.]

"No. 24. Oyster-pond point, plum gut entrance to Gardiner's bay, Long Island sound, Suffolk county, New York, containing an area of less than one acre. [Oyster-pond Reef Lighthouse is situated on the southwest side of plum gut between Plum Island and Orient Point, Long Island, at the entrance to Gardiners Bay from Long Island Sound.]

"No. 25. The Stepping Stones, about one mile south of Hart Island, Long Island sound, New York, containing an area of less than one acre. [Stepping Stones Lighthouse is situated on the east side of the channel toward the southwestern end of Long Island Sound.]

"No. 26. Mill reef, opposite New Brighton, in the kill von kull, Richmond county, New York, containing an area of less than one acre. [Mill Reef Lighthouse is situated in the kill von kull between Staten Island and Bayonne, New Jersey, opposite New Brighton.]

6. On December 19, 1867, the United States through its U. S. Lighthouse Depot, Staten Island, New York, made claim to submerged lands for a lighthouse site on adjoining Hart's Island, Long Island Sound, Westchester County, State of New York, by certificates filed with the Secretary of State of the State of New York. Said certificate of said U. S. Lighthouse Depot reads (*Mershon, The Power of the Crown in the Hudson Valley* (1925) as follows:

"U. S. Lighthouse Depot,
Tompkinsville, Staten Island, N.Y.
December 19, 1867.

"I hereby certify that in obedience to an order from the 'Light House Board,' I have selected the land for a Light House Site, on the south end of Hart's Island, Long Island Sound, Westchester County, State of New York, shown by the red shading in the Map hereunto attached, being 3 acres, 25,600 square feet more or less, ***with all the water privileges for land under water pertaining thereto.***

A. Ludlow Case,
Captain U. S. Navy & Light House Inspector,
3rd Light House District."

"Description and boundaries of land selected by the Government for a Light House Site, & c., on Hart's Island, as shown by the Map and survey hereto annexed.

"All that certain piece or parcel or land on the southern end of Hart's Island, Westchester County, State of New York, lying southerly of a line commencing at a large rock on the eastern shore of the Island at low water mark, and running thence south 62° 45′ west to low water mark on the western shore, being 3 acres, 25,600 square feet, more or less, *with all the water privileges for land under water pertaining thereto;* bounded Northerly by the land of John Hunter, and on all other sides by the waters of Long Island Sound, "and particularly described in a Map appended hereto, made by Joseph Lederle, Acting L. H. Engineer."

Albany, January 6, 1868.

"Executive Department,

'I hereby approve of the selection of land for a Light House Site, shown on the Map hereunto attached.'

R. E. Fenton.

'Examined and compared with the original description. Filed and recorded January 10, 1868.

(See Map with Miscellaneous Files in office of the Secretary of State.)'

D. Willers, Jr.,
Dep. Secy. of State."

6. This Honorable Court has declared that the State of New York (and also the State of New Jersey) have not ceded or granted to the United States, rights or jurisdiction over the sea adjoining said two states. In *Hamburg American Steamship Co. v. Grube,* 196 U. S. 14, Chief Justice Fuller stated in part that:

"As to the first ground the contention is that the Act of Congress of June 28, 1934 (4 Stat. 708, c.

126), giving consent to the agreement or compact between the States of New Jersey and New York in respect of their territorial limits and jurisdiction dated September 16, 1933, *vested exclusive jurisdiction in the Federal Government over the sea adjoining the two states. But there is absolutely nothing in the agreement and conformity statutes abdicating rights in favor of the United States, and the transaction simply amounted to fixing the boundaries between the two states.* (Laws of New York, 1934, p. 8, ch. 8; Laws of New Jersey, 1834, p. 18). The first proposition raised no Federal question."

Again this Honorable Court has determined the State of New York to be the owner of tide and submerged lands within its boundaries in *Massachusetts v. New York* (1926), 271 U. S. 65, stating in part that (p. 86):

"* * * As a result of the Revolution, the people of each State became sovereign and in that capacity acquired the rights of the Crown in the public domain (Martin v. Waddell, 16 Peters 367, 410), * * *."

* * * * * * * *

"It is a principle derived from the English common law and firmly established in this country that the title to the soil under *navigable waters* is in the sovereign, except so far as private rights in it have been acquired by express grant or prescription. Shively v. Bowlby, 152 U. S. 1. The rule is applied both to the territory of the United States (Shively v. Bowlby, *supra*) and to land within the confines of the States whether they are original States (Johnson v. McIntosh, *supra;* Martin v. Waddell, *supra*) or States admitted into the Union since the adoption of the Constitution. United States v. Holt State Bank, 270 U. S. 49. * * *." (p. 89.)

7. The Attorney General of the United States has ruled that the State of New York is the owner of the tide and submerged lands within its boundaries:

(a) On July 2, 1855, the Attorney General of the United States rendered his written opinion to the Secretary of War with respect to the ownership of the bed of the Hudson River in front of West Point, State of New York, stating in part (7 A. G. 312) that:

"It does not appear that the United States have any cession of land or of jurisdiction, from the State of New York, or from any landowner thereof, conveying to the United States the soil or the bed of the river Hudson, in which the chain lies."

(b) On July 3, 1855, the Attorney General of the United States rendered his written opinion to the Secretary of War with respect to the ownership of certain tide and submerged lands lying in Lake Ontario, within the State of New York, and stated in part (7 A. G. 314) that:

"I remark, first, on the supposed title of the United States to this land, which is presumed by collector Campbell and by Colonel Turnbull, on the ground of the land being accretion consequent on the construction of the pier.

"The misfortune is, that, in so far as appears, the United States had not any right or title to the shore of Lake Ontario or its bed, or to the shore or bed or banks of the Genesee river at lot No. 22, in the village of Charlotte; either by prerogative right, or by purchase from any individual, or by cession from the State of New York.

"The shores and beds of navigable waters, within a State, where not held by individuals, are the property of the State, not of the United States. (Pollard's Lessee v. Hagan, iii Howard, 230; Goodtitle on demise of Pollard's Heirs v. Kibele, ix Howard, 477; Doe on demise of Kennedy's Ex. v. Beebe and others, xiii Howard, 25.)

"The only right, which the United States have to any land in the village of Charlotte, is that in the lot No. 28, on which the lighthouse is erected. This property is held by purchase from the proprietor and by cession of jurisdiction from the State.

"Not owning the land on which the pier is placed, the United States do not own the accretions to it; for the property of the accretion follows that of the previous main land. (p. 317, 318.)

* * * * * * * *

"The United States, not having any right of property in the bed, shore, or banks of the river Genesee, or Lake Ontario, at lot No. 22, in the village of Charlotte, have no foundation for a claim to land made there by alluvial formations or by the recess of the waters.

"The United States have no property there to be affected by the gradual change in the margin of the waters of the Genesee river and Lake Ontario; nothing to be added to by alluvion, nothing to be lessened by abrasion. They did not acquire a right to land, submerged or not submerged, by building the pier upon the property of an individual or of the State." (p. 318.)

8. By Act of the Legislature of the State of New York (New York Laws 1892, Chapter 678) the State of New York granted to the United States title and jurisdiction

over a tract of submerged lands in the Hudson River at West Point extending into said river a distance of 3165 feet, for the purpose of permitting the United States to erect and maintain docks, wharves, boathouses, batteries and other military structures.

9. The State of New York granted to the United States an 8.83 acre parcel of submerged lands in Raritan Bay on the southern extremity of the shoal known as Great Beds at the intersection of the Raritan River and Perth Amboy channels embraced within a circle seven hundred feet in diameter with a designated center, for the purpose of erecting a lighthouse thereon. (7 Cumming and Gilbert's Consolidated Laws of New York, Page 8059.)

10. The State of New York granted to the United States tracts of submerged lands not exceeding two hundred fifty feet square adjoining the Battery Extension in the City of New York. (7 Cumming & Gilbert's *supra,* Page 8058.)

11. The State of New York granted to the United States a tract of submerged lands lying in the Hudson River in New York City conveyed for defense and safety purposes. (Cumming & Gilbert's *supra,* Page 8069.)

XVIII.

State of Connecticut.

1. The State of Connecticut is one of the original thirteen states of the United States of America. The grant from the King of England to the Colony of Connecticut and the boundary upon the Ocean or Sound are described in Paragraph VII of the First Affirmative Defense hereof.

By agreement dated December 8, 1879 between the States of New York and Connecticut, approved by Act of Congress of February 26, 1881 (21 Stat. 351) the boundary between said two States was fixed in Long Island Sound.

The oceanward boundaries of the four counties adjoining Long Island Sound are established by Act of the Legislature of the State of Connecticut as extending

> "southerly to the southerly boundary line of the state as settled and defined by the agreement with New York dated December 8, 1879."

(Connecticut Gen. Stats., Rev. 1888, Section 10.)

2. By Act of the legislature of the State of Connecticut approved March 25, 1925 (Connecticut Public Acts 1925, page 3810) the State authorized its governor to execute and deliver to the United States a deed to two tracts of submerged lands lying in Long Island Sound. The first tract of submerged lands consisted of a circular plot two hundred feet in diameter with a designated center and being in or near the mouth of Norwalk River. The second of these said parcels of submerged lands consisted of a circular plot two hundred feet in diameter the center being in or near Sheffield Island Harbor. Said two parcels were conveyed to the United States for the purpose of

erecting and maintaining thereon beacon lights or other aids to navigation. Said Act provided that if not used for said purpose within five years title thereto would revert to the State of Connecticut.

XIX.

State of Rhode Island.

1. The State of Rhode Island is one of the original thirteen states of the United States of America. The charters granted by the King of England to the Colony of Rhode Island and the Providence Plantation and the boundary established thereby, are described in Paragraph VII of the First Affirmative Defense hereof.

By Act of the Legislature of the State of Rhode Island (Gen. Stats. 1872, Title I, Chapter 1, Section 1; General Laws 1909, Title I, Chapter 1, Section 1) the territorial limits of the State of Rhode Island are defined to

> ". . . extend 1 marine league from its seashore at high water mark. When an inlet or arm of the sea does not exceed 2 marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore-line. The boundary of counties bordering on the sea extends to the line of the State, as above defined."

2. By Act of the Legislature of the State of Rhode Island passed March 11, 1885 (1885-1887 Rhode Island Acts and Resolves page 120), the State of Rhode Island granted to the United States ownership and jurisdiction over a tract of submerged lands lying within a circle three hundred feet in diameter the center of which are certain rocks described and located in mid-channel between Rose Island and Coasters Harbor Island in Newport

Harbor, for the purpose of erecting and maintaining a lighthouse thereon. Said Act reads in part as follows:

> "There is hereby granted to the United States ownership and jurisdiction over a circle of land three hundred feet in diameter, the centre of which shall be the rocks known as 'Gull Rocks,' in mid-channel between Rose Island and Coasters Harbor Island in Newport harbor, covered by the navigable waters of the state, on which the said United States propose to erect and maintain a lighthouse or other aid to navigation:"

3. By Act of the Legislature of the State of Rhode Island passed March 11, 1881 (1878-1881 Rhode Island Acts and Resolves page 102) the State of Rhode Island granted to the United States ownership and jurisdiction over a tract of submerged lands lying within a circle seven hundred feet in diameter the center of which is a certain named rock at the entrance to Narrangansett Bay for the purpose of erecting and maintaining a lighthouse, beacon or other aid to navigation. Said act reads in part as follows:

> "There is hereby granted to the United States ownership and jurisdiction over a circle seven hundred feet in diameter, of the land covered by the navigable waters of the State, the centre of which shall be the rock known as 'Whale Rock,' situated westward from the Beaver Tail light-house, and distant therefrom one and one-quarter miles, at the entrance of Narrangansett Bay, on which the said United States propose to erect and maintain a light-house, beacon, or other aid to navigation:"

4. By Act of the Legislature of the State of Rhode Island passed March 15, 1883 (1881-1884 Rhode Island Acts and Resolves page 121) said State granted to the United States ownership and jurisdiction over a parcel of submerged lands lying within a circle seven hundred feet in diameter the center of which is a named rock situated at the mouth of the Seaconnet River for the purpose of erecting and maintaining a lighthouse, beacon or other aid to navigation. Said grant is in language identical with the lighthouse site grant set forth in the last preceding paragraph, except for the parcel therein described.

The Attorney General of the United States rendered his written opinion dated March 31, 1883, approving the title of the State of Rhode Island granted to the United States by said Act of March 15, 1883, covering said parcel of submerged lands at the mouth of the Seaconnet River enclosed within said circle 700 feet in diameter as aforesaid.

5. By separate Acts of the Legislature of the State of Rhode Island (as set forth in General Laws 1923, Title I, Chapter 1, Section 3) the following parcels of submerged lands were granted by the State of Rhode Island to the United States for sites for lighthouses and other purposes:

(a) A parcel of submerged lands lying within a circle of one hundred feet radius from the center of the lighthouse on Bullock's Point Shoal in Providence River;

(b) A parcel of submerged lands lying within a circle of one hundred feet radius from the center of

the lighthouse at Fuller's Rocks in Providence River;

(c) A parcel of submerged lands lying within a circle of one hundred feet radius at Sassafras Point in Providence River;

(d) A parcel of submerged lands lying within a circle of two hundred feet diameter around a lighthouse site at the entrance of Great Salt Pond Harbor;

(e) A .721 acre parcel of submerged lands adjoining the breakwater at the Great Salt Pond Harbor;

(f) A .6 acre parcel of submerged lands around Bishop's Rock in Narrangansett Bay.

6. The State of Rhode Island has regulated the oyster industry within its state. (General Laws 1909, Chapter 203; General Laws 1923, Title II, Chapter 230.) A Board of Commissioners has been established by Act of Legislature of the State of Rhode Island empowering said commission among other things to lease in the name of the State for the purpose of oyster culture and the oyster business:

> "any piece of land within the state covered by four feet of tidewater at mean low tide . . . and not within any harbor lane"

for a term not in excess of ten years and for a rental of not less than five dollars per acre

> "where the water is of the depth of less than twelve feet at mean low tide."

XX.

State of Massachusetts.

1. The State of Massachusetts is one of the original thirteen States of the United States of America. The Charters from the Kings of England to the Masschusetts Bay Company of 1628 and 1691 are described in Paragraph VII of the First Affirmative Defense hereof. After a dispute having existed in colonial times between the Massachusetts Bay Colony and the Colony of New Hampshire as to the boundary between them, the conflict was referred to George II, King of England, who in 1737 decided that the line between the two Colonies should run three miles north of the Merrimac River, and thereupon the line was surveyed in 1741. It runs:

> "N 86° 07′ 30″ E. 876 feet to the center of a granite monument on Salisbury beach, and thence in the same course three miles from low water mark to the limit of state jurisdiction."

Said line between Massachusetts and New Hampshire was approved by Acts of the Legislatures of the States of Massachusetts (Mass. Acts 1899, c. 369) and New Hampshire (N. H. Laws 1901 c. 115, p. 620).

The southern boundary of the State of Massachusetts was the subject of a long dispute with Rhode Island, which was finally settled by Acts of the Legislatures of the States of Massachusetts (Mass. Act 1883, c. 113) and of Rhode Island (R. I. Pub. Laws 1884, c. 417) as extending on a given course, then:

> "* * * distant 1 marine league southerly from the said shore line."

By Act of the Legislature of the State of Massachusetts in the year 1859 (Mass. Acts 1859, c. 289; Gen. Stats. 1860, c. 1, §1) the easterly boundary of the State is defined as:

> "* * * the territorial limits of this commonwealth extend one marine league from its sea shore at extreme low water mark. If an inlet or arm of the sea does not exceed two marine leagues in width between its headlands, a straight line from one headland to the other is equivalent to the shore line."

The boundary line of towns bordering upon the Atlantic Coast are defined by Acts (Mass. Acts 1881, c. 196, p. 518, Mass. Pub. Stats. 1882, c. 27, §2. Mass. Rev. Laws 1902, c. 25, §1. Mass Gen. Laws 1921, c. 42, §1) so that the same:

> "shall coincide with the marine boundary of the commonwealth as above defined."

2. The State of Massachusetts granted to the United States submerged lands on and around Minot's Rock or Ledge in Massachusetts Bay by Chapter 109 of the Massachusetts Acts of 1847. The State of Massachusetts granted to the United States sites for four buoys at the mouth of the Merrimac River over "Hum Sands, Sunken Rock, Gangway Rock and Half Tide Rocks" by Chapter 4 of the Massachusetts Acts of 1790.

3. The State of Massachusetts granted to the United States submerged lands described as the rocks and flats under the piers in Merrimac River known as "Half Tide Rocks" by Chapter 1 of the Massachusetts Acts of 1816.

4. The State of Massachusetts granted to the United States submerged lands in the Harbor of Boston called

"Nix's Mate" for the site of a beacon by Chapter 41 of the Massachusetts Acts of 1832. The petition for said legislation describes the site involved as a sunken island located in said harbor.

5. The State of Massachusetts granted to the United States the beacon site on Point Allerton Bar at the Narrows in Boston Harbor by Chapter 17 of the Massachusetts Acts of 1855.

6. The State of Massachusetts granted to the United States submerged lands extending 400 yards beyond low-water mark in front of a fort to be constructed by the United States, and also granted submerged lands 400 yards beyond low-water mark at Clark's Point by Chapter 100 of the Massachusetts Acts of 1856.

7. By Act of the Legislature of the State of Massachusetts approved April 9, 1880 (1880 Acts and Resolves of Massachusetts, Page 133) said State authorized its board of harbor and land commissioners to convey to the United States the title of the Commonwealth of Massachusetts to any tracts of land covered by navigable waters within the Commonwealth for the purpose of erecting lighthouses, beacon lights, range lights or other aids to navigation. Said Act provides in part as follows:

> "The board of harbor and land commissioners, with the approval of the governor and council, are hereby authorized in the name and behalf of the Commonwealth to convey to the United States the title to any tracts of land covered by navigable waters within the Commonwealth, necessary for the purpose of erecting light-houses, beacon lights, range lights or

other aids to navigation, and light keepers' dwellings, upon the application of any authorized agent or agents of the United States: * * *"

8. By Act of the Legislature of the State of Massachusetts approved February 14, 1889 (1889 Acts and Resolves of Massachusetts, Page 801) said State granted to the United States the right to occupy and fill certain tide and submerged lands belonging to said State and to erect structures thereon located on Gallop's Island in Boston Harbor acquired for the construction and protection of sea walls. Said Act provides in part as follows:

> "Jurisdiction is hereby granted and ceded to the United States over so much of Gallop's island in Boston harbor as may be required for the construction and protection of the sea-walls to be erected for the security of Boston harbor.
>
> "The United States government *is hereby authorized to occupy and fill such flats belonging to the Commonwealth, and to place in or over tide-water* such structures as may be necessary for the purposes for which the premises over which jurisdiction is ceded in section one are to be used, and upon such terms and conditions as shall be prescribed by the harbor and land commissioners."

9. By Act of the Legislature of the State of Massachusetts approved February 7, 1899 (1899 Acts and Resolves of Massachusetts, Page 41) said State granted to the United States title and jurisdiction to the submerged lands lying in front of the Boston navy yard between the limits of the wharf line of said navy yard and the pier and bulkhead line, and authorized the United States to

fill the area of submerged lands thus granted. Said Act provides in part as follows:

> "For the purpose of enabling the United States of America to extend the present limits of the navy yard in Boston harbor the Commonwealth hereby grants and cedes to the United States jurisdiction over, and all right and claim of the Commonwealth to, that portion of land covered by navigable water lying between the limits of the wharf line of the said navy yard, as now constructed, and the pier and bulkhead line established by the secretary of war of the United States, * * *"

10. By Act of the Legislature of the State of Massachusetts approved April 22, 1903 (1903 Acts and Resolves of Massachusetts, Page 217) said State granted to the United States a rectangular parcel of submerged lands containing 435,000 square feet known as the "Graves" near the entrance to the harbor of Boston.

11. By Act of the Legislature of the State of Massachusetts approved May 25, 1905 (1905 Acts and Resolves of Massachusetts, Page 404) said State granted to the United States a tract of 77½ acres of tide and submerged lands constituting the military reservation of Fort Revere in the town of Hull, Massachusetts.

12. By Act of the Legislature of the State of Massachusetts approved March 6, 1907 (1907 Acts and Resolves of Massachusetts, Page 123) said State granted to the United States so much of the tide and submerged lands belonging to said State as may be necessary for the purposes of the United States in purchasing a tract of 100 acres above mean low water mark on Deer Island in Boston Harbor; and granted United States the right to

place such structures in and over the adjacent tide water to said upland on Deer Island as may be necessary for purposes of the United States. Said Act provides in part as follows:

> "SECTION 3. The United States government is hereby authorized, upon such terms and conditions as may be prescribed by the harbor and land commissioners, to occupy and fill such flats belonging to the Commonwealth, and to place such structures in or over the tide water adjacent to the area herein authorized to be purchased as may be necessary for the purposes for which said area is to be used."

13. By Act of the Legislature of the State of Massachusetts approved June 14, 1911 (1911 Acts and Resolves of Massachusetts, Page 565) said State granted to the United States submerged lands within an area of three acres situated in and on the southerly side of Boston Harbor. Said Act provides in part as follows:

> "SECTION 3. The commonwealth hereby cedes to the United States of America all tide water lands belonging to the commonwealth within the area to be acquired as aforesaid, and hereby grants to the United States the exclusive use and occupation thereof, together with the right to fill and dredge thereon, and to erect and maintain any and all structures thereon: *provided, however,* that the same shall revert to and revest in the commonwealth whenever the said lands shall cease to be used for the purposes set forth in this act."

14. This Honorable Court has decided or declared that the State of Massachusetts is the owner of the bed and soils underlying navigable waters within its jurisdiction. In *Manchester v. Commonwealth of Massachusetts* (1891), 139 U. S. 240, in upholding an Act of the Legislature of the Commonwealth of Massachusetts, approved May 6, 1886, entitled "An Act for the Protection of the Fisheries in Buzzard's Bay," this Court states, in part, that:

> ". . . Each State owns the beds of all tide-waters within its jurisdiction, unless they have been granted away. . . . Whatever soil below low-water mark is the subject of exclusive propriety and ownership belongs to the State on whose maritime border and within whose territory it lies, subject to any lawful grants of that soil by the State, or the sovereign power which governed its territory before the Declaration of Independence."

15. The State of Massachusetts ceded jurisdiction to the United States over land required by the United States for a drydock by Chapter 270 of the Massachusetts Acts of 1919. Title to the same land was conveyed by the State of Massachusetts to the United States by separate deed dated April 28, 1920. A plan thereof is on file with the Waterways Division of the Department of Public Works of the State of Massachusetts, being File No. 11.127E. The major portion of the land described in said deed consisted of flats belonging to the Commonwealth of Massachusetts between high and low water mark.

In addition said deed granted rights to the United States to dredge below low-water mark and to place wharves upon the submerged lands so dredged making a connection with the ship channel.

16. The State of Massachusetts granted to the United States additional submerged lands at Charlestown Navy Yard by Chapter 490 of the Massachusetts Acts of 1938. A further grant of submerged lands at the Navy Yard at Charlestown was granted to the United States by Chapter 12 of the Massachusetts Acts of 1941. A further grant of submerged lands for similar piers at Charlestown was made by the State of Massachusetts to the United States by Chapter 659 of the Massachusetts Acts of 1941. The lands granted by said Chapter 659 extend deep into navigable waters below low-water mark.

17. The State of Massachusetts granted submerged lands to the United States at South Boston for an army base by Chapter 14 of the Massachusetts Acts of 1942. The lands thereby granted were mostly flats lying between high and low tide. In addition said grant conveyed the right to dredge below low-water mark and to construct piers below low-water mark.

18. The State of Massachusetts granted the United States title to submerged lands in Boston Harbor by Chapter 458 of the Massachusetts Acts of 1943. The land thus granted is situated below low-water mark.

In each one of the grants above described the United States through one of its departments has accepted each grant and in most cases has erected some structure upon the submerged land thus granted. In many cases Congress has appropriated funds for the proposed construction of improvements prior to the date when such submerged land was granted by the State of Massachusetts to the United States.

19. The United States has exercised its power of eminent domain in several instances to acquire by condemnation the title of the State of Massachusetts to portions of its submerged lands. In this connection defendant alleges that:

(a) In Case 6537 Miscellaneous Civil in the United States District Court for the District of Massachusetts the United States condemned 12,500 feet of submerged land in Boston Harbor.

(b) In Cases Nos. 6770 and 7010 Miscellaneous Civil in the files of the United States District Court for the District of Massachusetts, the United States has condemned or sought to condemn submerged lands owned by the State of Massachusetts in Plum Island Sound, an arm of the sea.

XXI.

State of New Hampshire.

1. The State of New Hampshire is one of the original thirteen states of the United States of America. The grant from the King of England to the Colony of New Hampshire is described in Paragraph VII of the First Affirmative Defense hereof.

Rockingham County is the only county in the State of New Hampshire which adjoins the Atlantic Ocean and by statute the easterly boundary of said county is defined as being bounded

> "By the state line (with Massachusetts) to the sea, thence by the sea to the mouth of Piscateria River; including all that part of the Isle of Shoals which belongs to this state."

(1791 Laws of New Hampshire, Chapter 14; Gen. Stats. 1867, Chapter 19, Section 2, Page 69.) Said Isle of Shoals is situated a distance of approximately nine miles off the shore of the coast of New Hampshire.

2. The State of New Hampshire granted to the United States one of the Isle of Shoals on the condition that the United States erect a lighthouse thereon. Said grant was made by Act of the Legislature of the State of New Hampshire approved June 20, 1820. (1820 Laws of New Hampshire, Chapter 16.)

3. By Act of the Legislature of the State of New Hampshire of June 29, 1821 (1821 Laws of New Hamp-

shire, Chapter 29) the State granted to the United States a parcel of submerged lands around Sunken Rocks in Portsmouth Harbor not exceeding one hundred feet square to be used for a pier or beacon.

4. The State of New Hampshire has exercised its right of ownership in and to tide and submerged lands situated within the boundaries of said State.

(a) By Act of the Legislature of the State of New Hampshire (1941 New Hampshire Laws, Chapter 221) the State Forrester is authorized to issue prospecting licenses to prospect for valuable mineral and natural deposits in and under the beds of navigable waters within said state.

(b) During the period from 1934 to 1940 the State of New Hampshire has undertaken and has constructed jetties and has dredged the harbor at Rye, New Hampshire and elsewhere and has received financial aid and assistance from the United States for said purpose.

(c) The State of New Hampshire has established "a New Hampshire Shore and Beach Preservation and Development Commission"

(1943 New Hampshire Laws, Chapter 128) whose duty it is to devise effective means of preventing erosion of the coast of said state as result of the action of the waves and currents.

XXII.

State of Maine.

1. The State of Maine was admitted into the Union by Act of Congress approved March 3, 1820:

> "* * * on an equal footing with the original States, in all respects whatever."

Said Act of Admission was made pursuant to the Act of the Legislature of the State of Massachusetts passed June 19, 1819 entitled "An Act Relating To The Separation Of The District Of Maine From Massachusetts Proper, And Forming The Same Into A Separate And Independent State." Following thereupon the people of that part of the State of Massachusetts, theretofore known as the District of Maine, did form themselves into an independent State and did establish a Constitution for the government of the same.

The Grants and Charters for the Colony of Maine and the dispute as to the claim over said territory by the Massachusetts Bay Colony, and the cession of the territory within the province of Maine by the heirs of Sir Francis Gorges prior to the year 1776 are described in Paragraph VII of the First Affirmative Defense hereof.

2. By an early Act of the Colony of Massachusetts, the counties along the coast of the then province or district of Maine were bounded

> "southeast by the sea or western ocean * * * including all the islands on the sea coast * * *"

(Act of Massachusetts 1760; Act of Massachusetts, June 25, 1789.)

By Acts of the Legislature of the State of Maine (Maine Rev. Stat. 1916, Chapter 133, Section 3, Page 1514; Maine Rev. Stat. 1930, Chapter 143, Section 3, Page 1640) it is generally provided with reference to the coastal counties of said State:

> "* * * the lines of the several counties which terminate at or in tidewaters shall run by the principal channel in such directions as to include, within the counties to which they belong, the several islands in said waters, and after so including such islands shall run in the shortest and most direct line to the extreme limit of the waters under the jurisdiction of this state; and all waters between such lines off the shores of the respective counties shall be a part of and held to be within such counties."

3. By Act of the Legislature of the State of Maine approved March 15, 1887 (1887-9 Maine Resolves, Page 50) the State of Maine granted to the United States two tracts of submerged lands consisting of a 9.63 acre parcel and a one acre parcel situated in the Atlantic Ocean. Said Grant reads as follows:

> "That the land agent is hereby authorized, in the name and on behalf of the state to execute and deliver to the United States of America, good and sufficient deeds of the two parcels of land hereinafter described, so that all the title of the state in and to the same may thereby vest in the United States, namely: First, beginning at the Western Bar Beacon, as located on the United States Coast Survey Chart number three, scale one eighty thousandth, edition of eighteen hundred and eighty-three, and described on page twenty-four of the Atlantic Coast Pilot, second edition, eighteen hundred and seventy-nine, and running thence north nineteen degrees and nineteen

minutes west fifteen hundred feet; thence south seventy degrees and forty-one minutes west two hundred and ninety feet; thence south nineteen degrees and nineteen minutes east fifteen hundred feet; thence north seventy degrees and forty-one minutes east two hundred and ninety feet to the point of beginning, *and embracing nine acres and forty-two thousand nine hundred and sixty square feet; the said area being wholly submerged by the tides and all lying more than one hundred rods from the lowest high water line at Lubec Narrows in Quoddy Roads in the state of Maine.* Second, the ledge of rock known and described on page one hundred and twenty-nine of the Atlantic Coast Pilot, second edition, eighteen hundred and seventy-nine, as Crabtree Point Ledge, and *lying about six feet below the surface of extreme low water in Frenchman's Bay,* about five hundred feet east from the shore of Crabtree's Neck in Hancock county, Maine, *the area of the ledge being about one acre."*

Jurisdiction over the submerged lands last above described were ceded to the United States by the State of Maine by said Act. (1887 Maine Special Laws, Page 365.)

4. By Act of the Legislature of the State of Maine approved April 17, 1857 (1856-8 Maine Laws, Page 117) the said State granted to the United States title and jurisdiction to the submerged lands extending 700 yards beyond the low water mark in front of any fort to be built on Hog Island Ledge in the harbor of Portland, Maine. By said Act, the State of Maine granted title and jurisdiction to the United States of any tract or tracts of land at or near the entrance to the Kennebec River,

Maine, in the Atlantic Ocean acquired by the United States for the construction and maintenance of forts and other structures over all the contiguous shores, flats and waters within 400 yards from the front thereof. Said Act reads in part as follows:

"SECTION 1. Jurisdiction is hereby ceded to the United States over the 'Hog Island Ledge,' in the harbor of Portland, Maine, to include all of said 'ledge' above or *within low water mark, and so much thereof without low water mark as shall be bounded by lines drawn seven hundred yards distant from and parallel to the faces of any fort* to be built thereon, for the purpose of carrying into effect an act of congress, of March third, eighteen hundred and fifty-seven, providing for the commencement of a fortification on 'Hog Island Ledge,' in Portland harbor, Maine. Jurisdiction is also ceded to the United States over any tract or tracts of land at or near the entrance to Kennebec river, Maine, that may be acquired by the United States for the purpose of carrying out an act of congress, of March third, eighteen hundred and fifty-seven, providing for the erection of 'fortifications at the mouth of the Kennebec river, Maine,' by building and maintaining thereon forts, magazines, arsenals, dock yards, wharves and other structures, with their appendages, *and over all the contiguous shores, flats and waters, within four hundred yards from low water mark; and all right, title and claim, which this state may have to, or in the said 'Hog Island Ledge,' in Portland harbor, and said tract or tracts at or near the entrance to Kennebec river, are hereby granted to the United States;* * * *"

5. A parcel of submerged lands lying in Lubec Narrows, in Quoddy Roads, Maine, was granted to the United States by the State of Maine about the year 1886. Said parcel is situated in the Atlantic Ocean approximately on the international boundary between the United States and Canada. In the 1886-87 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 18, it is reported as follows:

> *"Lubec Narrows, in Quoddy Roads, Maine.*— At the site selected for this light-house, borings were made from 10 to 26 feet into tough blue clay, reaching a depth of 19 to 36 feet below mean low water, and 16 to 30 feet below the surface of the shoal, the mean rise and fall of the tides being 17 feet. *Title to the site, with jurisdiction, was secured from the State of Maine, and a design for the light-house was prepared."*

6. A parcel of submerged lands on Crabtree Ledge, Frenchman's Bay, Maine, was granted to the United States by the State of Maine in about the year 1886. In the 1886-87 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 19, it is reported as follows:

> ". . . Crabtree Ledge in Frenchman's Bay, Maine.— This ledge, upon which there are from 8 to 12 feet of water at mean low tide, was surveyed, *title to the site, with jurisdiction, was secured from the state of Maine,* and drawings, specifications, and estimates for the light-house were prepared."

7. A parcel of submerged lands on Clark's Ledge, Eastport Harbor, Maine, was granted to the United States by the State of Maine in about the year 1889 at the request of the United States. Said Clark's Ledge is in the Atlantic Ocean approximately on the international boundary between the United States and Canada. In the 1888-89 Annual Report of the United States Light-house Board to the Secretary of the Treasury, page 31, it is reported as follows:

> "Clark's Ledge, Eastport Harbor, Maine.— Vessels navigating the St. Croix River need a light to guide them to its entrance between the whirlpools off Deer Point and Dog Island near Eastport. Clark's Ledge, near the shore of Eastport Harbor, is almost covered at high water, is very dangerous to navigation, and has caused the loss of several vessels. A light here would serve the twofold purpose of guiding vessels to the entrance of the river, and clear of this dangerous ledge. For this purpose an appropriation of $30,000 is needed. *The legislature of Maine,* which convenes biennially, and will not assemble until the winter of 1890-91, *has conveyed title to the ledge and jurisdiction over it to the United States,* so that the light-house may be erected whenever an appropriation therefor is made by Congress."

XXIII.

State of Ohio.

1. The State of Ohio was formed pursuant to Enabling Act of Congress approved April 30, 1802. Said Enabling Act authorized the inhabitants of the territory to form a constitution and state government and that said State, when formed, shall be admitted into the Union "upon the same footing as the original states in all respects whatever."

Said Enabling Act fixed the boundaries of the State of Ohio in and along Lake Michigan as being:

> "On the north by an east and west line drawn through the southerly extreme of Lake Michigan running east after intersecting due-north line aforesaid from the mouth of the Great Miami until it shall intersect Lake Erie on the territorial line, and then with the same through Lake Erie to the Pennsylvania line aforesaid: * * *".

The People of the territory of Ohio framed a Constitution dated November 29, 1802, pursuant to said Enabling Act.

Said Constitution of 1802 fixed the boundaries of said State in identical language with that contained in said Enabling Act above quoted.

By Act of Congress approved February 19, 1803, Congress recognized and declared that the State of Ohio had become one of the United States of America.

2. By Act of its General Assembly, the State of Ohio has declared that the waters of Lake Erie, within the boundaries of said State, together with the soil beneath and its contents, do belong and have always, since the organization of the State of Ohio, belonged to said State. (3

Page's Ohio General Code Annotated, Section 3699-a.) Said Act declares in part as follows:

> "It is hereby declared that the waters of Lake Erie within the boundaries of the state together with the soil beneath and their contents do now and have always, since the organization of the State of Ohio, belonged to the state of Ohio as proprietor in trust for the people of the state of Ohio, subject to the powers of the United States government, the public rights of navigation and fishery and further subject only to the right of littoral owners while said waters remain in their natural state to make reasonable use of the waters in front of or flowing past their lands, and the rights and liabilities of littoral owners while said waters remain in their natural state of accretion, erosion and avulsion. * * *"

3. The State of Ohio has granted to each municipal corporation having a frontage on the shore of Lake Erie, the power, in aid of navigation and water commerce, to construct, maintain, use or lease, piers, docks, wharves and terminal facilities over and on any submerged or artificially filled land or artificially accreted lands

> "title to which is in the State of Ohio, within the territory covered or formerly covered by the waters of Lake Erie in front of littoral land within the limits of said [municipal] corporation whether said littoral land is privately owned or not. * * * The territory to which the powers hereby granted shall * * * [extend] into Lake Erie to the distance of two miles from the natural shore line; * * * Provided, however, that * * * all mineral rights or other natural resources existing in the soil or waters in said territory, whether now covered by water or not, are reserved to the state of Ohio * * *." (3 Page's Ohio Gen. Code, Ann. 93699-1.)

Pursuant to said act, municipalities of the State of Ohio having frontage along Lake Erie have executed various leases of submerged lands in Lake Erie within their respective municipal boundaries for piers, wharves, terminal facilities and other purposes. (See *White v. City of Cleveland,* 14 O. C. C. (N. S.) 369, 87 O. S. 483; 1926 Ohio Attorney General Opinions, page 284.)

4. By Act of the General Assembly of the State of Ohio, a deed dated September 6, 1875, executed on behalf of the State by its Governor, conveying to the United States the title to certain lands under water in Lake Erie for the purpose of erecting thereon certain lights and other aids to navigation, is thereby approved and confirmed. (1880 Laws of Ohio, page 8457; 11 Page's Ohio General Code Annotated, Section 13,835.)

5. By Act of its General Assembly, the State of Ohio has authorized its Governor to convey to the United States title to land "belonging to the State" and "covered by navigable waters" in parcels not exceeding 12 acres each, for sites for lighthouses, beacons, or other aids of navigation. (1880 Laws of Ohio, page 8548; 11 Page's Ohio General Code Annotated, Section 13836.) Said act provides in part as follows:

> "That whenever the United States desire to acquire title to land belonging to the state, and covered by navigable waters of the United States, within the limits hereof, for the site of a lighthouse, beacon, or other aid to navigation, and application is made by a duly authorized agent of the United States, describing the site required for one of the purposes aforesaid, then the governor of the state is authorized and empowered to convey the title to the United States, and to cede to the said United States jurisdiction over the same: provided, no single tract shall contain more than twelve (12) acres, * * *".

XXIV.
State of Illinois.

1. Pursuant to Enabling Act approved by Congress April 18, 1818, the People of the territory of Illinois framed a constitution and state government on or about August 26, 1818. Said Enabling Act provided that said state when formed shall be admitted into the Union "on the same footing as the original states in all respects whatever."

By joint resolution of Congress approved December 3, 1818, Congress determined that the State of Illinois had been formed in accordance with said Enabling Act and thereby declared the said State to be one of the United States admitted into the Union "on an equal footing with the original states in all respects whatever."

By said Enabling Act Congress established the boundaries of the State of Illinois which are therein fixed as follows:

> "That the said State shall consist of all the territory included within the following boundaries, to-wit: Beginning at the mouth of the Wabash River, thence up the same and along the line of Indiana to the northwest corner of said state; thence east, with the line of the same state to the middle of Lake Michigan; thence north, along the middle of said lake to North Latitude 42° 30′; thence west to the middle of the Mississippi River and thence down, along the middle of that River to its confluence with the Ohio River; and thence up the latter along its north western shore, to the beginning: * * *."

By the 1818 Constitution of the State of Illinois, the same state boundary is fixed and determined.

2. The Attorney General of the United States on October 19, 1853, rendered his opinion to the Secretary of War respecting the title of the State of Illinois to the soil under Lake Michigan at Waukegan, Illinois. The War Department was then in the course of constructing a breakwater in Lake Michigan and had requested the opinion of the Attorney General as to the rights of the United States to restrain any person from constructing a bridge or other obstruction within a certain distance from the breakwater so that a good ship channel might be maintained adjoining said breakwater.

The first legal question passed upon by the Attorney General in his said opinion was described by him as

> "In whom are the right and title to the lake-shore, and to the soil covered by the water of Lake Michigan at Waukegan, in the State of Illinois?"

In answering the foregoing question, the Attorney General stated (80, A. G., p. 172), that:

> "I conceive this point to be thoroughly settled, as well by the general theory of the Federal Government as by the adjudications of the Supreme Court, and the whole tenor of the legislation of Congress.
>
> "In the case of Pollard's Lessee v. Hagan, (iii Howard, 212) the Supreme Court came to the following conclusions, namely:
>
> " 'First, the shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively.'
>
> " 'Secondly, the new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.'
>
> "The doctrine of this case has been considered, and affirmed and reaffirmed, in the subsequent cases of

Goodtitle on the demise of Pollard's Heirs v. Kibbe, (ix Howard, 477), and of Doe on the demise of Executors of Kennedy v. Beebe and others, (Xiii Howard, 25) and must be taken to be the law of the land.

"The principle extends in fact to the whole body of any navigable water in the United States and the soil under it. * * * Similar doctrine * * * applies to all other navigable waters in the United States.

* * * * * * * *

"Observe, that in the leading case of Pollard's Lessee v. Hagan, affirmed and reaffirmed in the subsequent cases cited, the doctrine of the court is expressly applied to the territory ceded by Virginia to the United States, out of which the State of Illinois has been formed; and it extends therefore to the waters and to the submarine soil of Lake Michigan.

"I proceed now to inquire how the question stands upon the acts of Congress pertinent to the subject.

"The United States have no grant from the State of Illinois, nor any title under a grant of the State, for the submerged soil whereon the bridge piers in Lake Michigan have been erected, nor whereon to erect the contemplated breakwater in the lake.

"It is impossible to admit that the United States may, by erecting bridge piers, or breakwaters, or other such like works, within the sovereignty and jurisdiction of a State, and without the consent of the State, thereby divest the right, title and jurisdiction of the State, and appropriate and transfer the right of property and the sovereignty and jurisdiction over the soil and the works to the Government of the United States, any more than an individual could, by erecting a building on the soil of another without his consent, convert the soil, and the buildings on it, into the private estate, right, and title of such trespasser.

"Neither the power of Congress to regulate commerce, nor its power to legislate in all cases whatsoever for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, can operate to divest the States of their rights of soil and jurisdiction; the lands for all such purposes must, by the express words of the Constitution, be 'purchased by the consent of the legislature of the State in which the same shall be.' Thus, Castle Calhoun, at the Rip-Raps, was built on the soil of the submerged shoal, ceded to the United States by the State of Virginia. And Fortress Monroe, also, is built on a place ceded by the State of Virginia. By the law of the United States, approved 20th March, 1794, (i Stat. at Large, p. 345, chap. ix.,) the President of the United States was authorized to fortify the ports and harbors therein mentioned, (to the number of twenty;) and it was made lawful for him to receive from any State a cession of the lands, or to purchase from individuals the lands on which any of the fortifications, with the necessary buildings, may be, or are intended to be, erected. This is inconsistent with the idea that the United States can, by erecting fortifications, or ports and harbors, convert the lands, whereon such needful buildings shall be erected, into the property and title of the United States, without cession or purchase from the State, or the individual therein who may be the rightful proprietor.

"The first volume of Bioren and Duane's edition of the Laws of the United States, contains suggestive abstracts of the various cessions by States, and conveyances by individuals, at the date of that publication, made to the United States, of lands, and lots of ground, and soil above water, and of water-lots, flats, shoals, and rocks, under water, beaches, islands,

and shoals, for navy-yards, custom houses, forts, arsenals, and other public purposes."

* * * * * * * *

"The United States have no cession from Illinois of those navigable waters, nor of the soils under them, nor of the water of Lake Michigan, nor the soil under it, within the State of Illinois, upon which the bridge piers are built, nor of the submerged soil upon which the breakwater is to be erected at Waukegan.

"The conclusion is irresistible that the rights of the United States, in the premises, and the remedy, if any, for the contemplated obstructions of the navigability of the waters of Lake Michigan at Waukegan, must be placed on some ground independent of that of title to soil, or of jurisdiction and domain, which certainly continue in the State of Illinois.

"It is not to be doubted, therefore, that the State of Illinois, having the property in the shore and soil covered by the water of the lake, may, at her pleasure, abate any nuisance created on said shore or soil within her jurisdiction. * * *"

3. This Honorable Court has declared that the State of Illinois is the owner of the tide and submerged lands lying in Lake Michigan within the boundaries of said State.

Illinois Central Railroad Company v. Illinois (1892), 146 U. S. 387, 36 L. Ed. 1018, involved the title to submerged lands constituting a part of the bed of Lake Michigan, as well as certain reclaimed submerged lands. The Court summarized the boundaries of the State of Illinois in Lake Michigan by saying (p. 434):

"It is sufficient for our purpose to observe that they [boundaries of said State] include within their eastern line all that portion of Lake Michigan lying east

of the main land of the State and the middle of the Lake south of line forty-two degrees and thirty minutes."

With respect to the ownership of the State of Illinois to the bed of Lake Michigan within its boundaries, the Court stated (p. 435), in part, as follows:

"It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation so far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has been often announced by this Court, and is not questioned by counsel of any of the parties. *Pollard's Lessee v. Hagan,* 3 How. 212; Weber v. Harbor Commissioners, 18 Wall. 57.

"The same doctrine is in this country held to be applicable to lands covered by fresh water in the Great Lakes over which is conducted an extended commerce with different States and foreign nations. These lakes possess all the general characteristics of open seas, except in the freshness of their waters, and in the absence of the ebb and flow of the tide. In other respects they are inland seas, and there is no reason or principle for the assertion of dominion and sovereignty over and ownership by the State of lands covered by tide waters that is not equally applicable to its ownership of and dominion and sovereignty over lands covered by the fresh waters of these lakes."

XXV.

State of Michigan.

1. By Enabling Act of Congress approved June 15, 1836, the Constitution and State Government which the people from Michigan had formed for themselves, was thereby ratified, accepted and confirmed by Congress and the State of Michigan was thereby declared to be one of the United States of America admitted into the Union

> "on an equal footing with the original States in all respects whatever."

By said Enabling Act the boundaries of the State of Michigan were fixed by Congress, the northerly line thereof being described therein, in part, as follows:

> "* * * running thence with the said boundary-line of Ohio, * * * until it intersects the boundary-line between the United States and Canada, in Lake Erie; thence with the said boundary-line between the United States and Canada, through the Detroit River, Lake Huron, and Lake Superior, to a point where the said line last touches Lake Superior; thence in a direct line through Lake Superior, to the mouth of the Montreal River; thence through the middle of the main channel of the said river Montreal, to the middle of the Lake of the Desert; * * * to the centre of the most usual ship-channel of the Green Bay of Lake Michigan; thence, through the centre of the most usual ship-channel of the said bay, to the middle of Lake Michigan; thence, through the middle of Lake Michigan, to the northern boundary of the State of Indiana, * * *"

Supplementary Acts for the admission of the State of Michigan were approved by Congress on June 23, 1836, and January 26, 1937.

By the Constitution of the State of Michigan dated August 15, 1950, the boundaries of the State of Michigan are again set forth as established by said Enabling Act of Congress above quoted.

2. The Congress of the United States recognized the title of the State of Michigan to the bed of the Great Lakes within its boundaries. Section 3 of Public Law 480, 77th Congress, Second Session, established the boundaries of Isle Royal National Park lying in Lake Superior within the boundaries of the State, as including submerged lands within 4½ miles of the shore line of said Isle Royal and surrounding islands, and authorized the Secretary of the Interior to acquire title by donation to any such lands not owned by the United States. Said Act provides in part as follows:

> "The boundaries of the Isle Royal National Park are hereby extended to include any submerged lands within 4½ miles of the shore line of Isle Royle and the immediately surrounding islands, and the Secretary of the Interior is hereby authorized, in his discretion, to acquire title by donation *to any such lands not now owned by the United States, the title to be satisfactory to him.*"

3. By Act of the Legislature of the State of Michigan, approved March 24, 1874 (1874 Laws of Michigan, p. 5; 2 Mich. Stats. Annotated, p. 271), the State authorized its Governor to grant to the United States title

> "to land belonging to the State of Michigan, including land which is now or has in the past been covered by navigable waters"

for sites for any improvement to any government area reservation or station, including lighthouses, beacons or

other aids to navigation, or for the building of sea-walls and breakwaters.

Said statute was amended by Act of the Legislature of the State of Michigan approved May 29, 1931 (1931 Public Acts of Michigan, p. 442) to authorize the Governor of Michigan to convey title to the United States

> "to land belonging to the State of Michigan, including land which is now or has in the past been covered by navigable waters"

for sites for any improvement or addition to any government area, reservation or other station, including military or naval reservations or stations, lighthouses, beacons or other aids to navigation or aeronautics or for building seawalls, breakwaters, ramps and piers.

XXVI.

State of Wisconsin.

1. By Enabling Act of Congress approved August 6, 1846, the people of the Territory of Wisconsin were authorized to form a Constitution and State Government, and having formed such Constitution and State Government, Congress by Act approved May 29, 1848, admitted said State into the Union

"on an equal footing with the original States."

By said Enabling Act the boundaries of the State of Wisconsin were fixed, in part, as follows:

> "Beginning at the northeast corner of the State of Illinois, that is to say, at a point in the centre of Lake Michigan where the line of 42 degrees and 30 minutes of North Latitude crosses the same; thence running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay * * * thence down the main channel of the Montreal River to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of St. Louis River * * *"

By the 1848 Constitution of the State of Wisconsin, Article II, the boundaries of said State are established as set forth in said Enabling Act above quoted.

2. The Secretary of War reported to Congress on June 3, 1920, recommending the adoption of a new plan for port development in the outer harbor of the City of Milwaukee in Lake Michigan upon condition that the City of Milwaukee deed to the United States a portion of submerged lands in Lake Michigan necessary for the formation of turning basins and the construction of improvements thereon by the United States. The Secretary of

War there adopted the prior report of the Chief Engineers and the Board of Engineers as contained in House Document No. 804, 66th Congress, Second Session. On Page 9 of said Report, it is stated that:

"These conditions are briefly: . . . the transfer by the City of Milwaukee to the United States of the title to all land necessary for formation of turning basins and for widening and straightening the rivers . . . The project provides that as rapidly as the land necessary for any part of the work specified is transferred to the United States, . . . the dredging to be done by the United States shall proceed . . .

"The State of Wisconsin has granted to the City of Milwaukee the right to fill in and occupy such portions of the submerged lands in Lake Michigan as are required for these improvements.

"In accordance with a permit granted September 24, 1915, under authority of the Secretary of War, the city has constructed a rubble mound, forming a bulkhead, extending from the harbor entrance northerly to the south line of Wisconsin Street prolonged, behind which material is being deposited, forming additional land for wharves, warehouses, trackage, etc. *along the lake front of which the city of Milwaukee is now the riparian owner.* A series of piers and slips are to be built by the city, projecting into the water beyond the land thus formed.

"Legislation is recommended, if it be necessary, authorizing the acceptance of the land proposed to be donated to the United States near the river mouth. . . . It is possible also that the authority of the State of Wisconsin will be required for the execution of a proper deed to the United States by the city,

although a friendly suit in condemnation might afford a proper method of passing title. The acquisition of this land by the United States is highly desirable and, in fact, necessary."

By Act of Congress approved September 22, 1922 (42 Stats. 1039), Congress required the conveyance of submerged lands by the City of Milwaukee in accordance with the report and recommendation of the Secretary of War, said Act providing, in part, as follows:

"Be it enacted . . ., That the following works of improvement are hereby adopted and authorized . . . in accordance with the plans recommended in the reports hereinafter designated:

* * * * * * * *

"Milwaukee Harbor, Wisconsin, in accordance with the report submitted in House Document Numbered 804, Sixty-Sixth Congress, Second Session, and subject to the conditions set forth in said document."

3. By Act of the Legislature of the State of Wisconsin aproved June 5, 1929 (1929 Laws of Wisconsin, Chapter 150) the State of Wisconsin granted to the United States its title to 19 acres of submerged lands in the City of Milwaukee as required by the report of the Secretary of War above quoted; upon the condition, however, that the grant be not operative until the consent of the City of Milwaukee shall have been obtained.

By resolution of the Board of Harbor Commissioners of the City of Milwaukee filed with the Secretary of State of the State of Wisconsin, as required by said Section 150, the consent of the City of Milwaukee was thereby given to said grant of said 19 acre tract of submerged lands

granted to the United States by the State of Wisconsin, as aforesaid.

4. In the report of the War Department by its Board of Engineers for Rivers and Harbors issued in 1939 pursuant to Act of Congress known as The Transportation of 1920, Section 55, said Report being entitled "THE PORT OF MILWAUKEE, WIS." it is reported, as to the ownership of the Port of Milwaukee, in part, as follows:

> "That portion of the water front in the outer harbor, extending from the foot of Wisconsin Avenue southerly to the south limits of the protected outer basin, *is owned by the city of Milwaukee* and is under direct control of the board of harbor commissioners. A commercial outer harbor is being developed in this area. That portion of the water front in the outer harbor, extending from the foot of Wisconsin Avenue northerly to the north limits of the protected outer basin, *was formerly owned by the city of Milwaukee,* but has been conveyed to the county and is now under direct control of the Milwaukee County Park Commission. This area is used for park purposes only."

Third Affirmative Defense.

1. The State of California, acting in reliance upon the recognition by plaintiff, United States of America, of the State's ownership of and title to all lands under all navigable waters within the boundaries of the State (as more particularly alleged in the Second Affirmative Defense hereof), has made various and numerous grants, leases, easements, franchises, licenses and other interests and its political subdivisions have taxed and assessed such granted or leased interests, in and to lands under navigable waters of the State, both along the open coast and in bays, harbors, rivers and lakes, to numerous parties and over a period commencing shortly after the formation of the State and continuing down to the present time.

2. The State of California, acting in reliance upon such recognition by plaintiff of the State's said ownership, has, by its various departments, agencies, officers and employees, as well as by its various grantees and lessees, gone into possession and is now in open, adverse and notorious possession of, and has exercised and is now exercising all rights and attributes of ownership, in and to large portions of submerged lands underlying the coastal waters of the State as well as in and to lands underlying navigable waters within the State of California in bays, harbors, rivers and lakes. The State and its municipalities and other grantees have expended huge sums in the reclamation and improvement of large portions of submerged lands.

3. The details of some of the grants, leases, easements, franchises and licenses made by the State of California to the various parties above referred to, some of the taxes levied and assessed, some of the possession taken and oc-

cupied and the attributes of ownership exercised by the State of California, as aforesaid, are as follows:

I.

Declarations contained in the Constitution of California and enactments of its Legislature, that the State of California is the owner of all tide and submerged lands within its boundaries, are the following:

1. The Legislature of the State of California in the year 1872 enacted Civil Code Section 670 declaring the State to be the owner of all land below the ordinary high water mark bordering upon tide water within the State. Said Section 670 reads in part as follows:

> "§670. *Property of the state.* The state is the owner of all land below tidewater and below ordinary high-water mark, bordering upon tide-water within the state; of all land below the water of a navigable lake or stream; . . ."

2. In the year 1879 a Constitution was adopted by the People of the State of California supplanting the 1849 Constitution referred to in the First Affirmative Defense hereof. Article XV, Section 3, placed a restriction on the grant or sale of tide and submerged lands owned by the State by providing therein as follows:

> "Sec. 3. All tide-lands within two miles of any incorporated city or town in this state, and fronting on the waters of any harbor, estuary, bay or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations."

The word "tide-lands" used in Article XV, Sec. 3, above, has been construed by the Supreme Court of California to embrace lands properly described as "submerged lands" and that said restriction on alienation thereof applies equally to tide and submerged lands owned by the State. (*San Pedro, Los Angeles and Salt Lake Railroad Company v. Hamilton* (1911), 161 Cal. 610, 614.)

Said constitutional restriction upon the granting of tide and submerged lands owned by the State has been construed as not placing a restriction upon leases of tide and submerged lands by the State or its grantees. (*San Pedro, Los Angeles and Salt Lake Railroad Company v. Hamilton, supra.*) Likewise the foregoing constitutional restriction has been construed not to prohibit the State from granting permits and leases to prospect for oil and gas upon, in and under the tide and submerged lands owned by the State. (*Kelly v. Kingsbury* (1930), 210 Cal. 37; *Boone v. Kingsbury* (1928), 206 Cal. 148.)

II.

The Legislature of the State of California has made numerous grants of tide and submerged lands to municipalities and counties of the State, many of them extending three miles from shore or to the limit of the State's westerly boundary in the Pacific Ocean. These grants have been made over a period of many years. The municipal grantees thereunder have developed harbors and have made vast expenditures for large improvements in reliance on the title and ownership thus conveyed by the State of California. These grants have on numerous occasions been

the subject of review by the Supreme Court of California and have been uniformly upheld by that court as conveying valid title from the State to the respective municipal and county grantees. In this connection defendant alleges that:

1. By Act of the Legislature of the State of California approved May 1, 1911, tide and submerged lands lying within the boundaries of The City of San Diego were conveyed to said City for harbor purposes and for purposes of navigation, commerce and fisheries. (Stats. 1911, p. 1357.) Said statute recited in part as follows:

> "WHEREAS, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of navigation, commerce and fishing;"

Said grant is more fully set forth in Paragraph B-V of the Second Affirmative Defense hereof.

2. By Act of the Legislature of the State of California, approved May 1, 1911 (Stats. 1911, p. 1304) the State granted to the City of Long Beach all the tide and submerged lands

"held by said state by virtue of its sovereignty"

within the boundaries of said City

> "situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held in trust by said City for harbor purposes. Said grant conveyed the tide and submerged lands extending into the Pacific Ocean and Bay of San

Pedro with its most westerly limits being a line three miles distant from and parallel with the shore line in front of said City of Long Beach.

Said grant to the City of Long Beach is more particularly described in Paragraph B-II of the Second Affirmative Defense hereof.

3. By Act of the Legislature of the State of California, approved May 1, 1911 (Stats. 1911, p. 1256) the State of California granted to the City of Los Angeles all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated within said city

> "below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held by said City in trust for harbor purposes.

Said grant conveyed to the City of Los Angeles all tide and submerged lands lying in the Pacific Ocean with its most westerly limits being a line three miles distant from and parallel with a line extending from Point Fermin to Point Lasun, the two headlands of the Bay of San Pedro.

Said grant to the City of Los Angeles is more fully described in Paragraph B-III of the Second Affirmative Defense hereof.

4. By Act of the Legislature of the State of California, approved April 12, 1915 (Stats. 1915, p. 62) the State conveyed to the City of Redondo Beach all

the tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

situated therein

> "below the line of mean high tide of the Pacific Ocean"

to be held in trust for harbor purposes.

The city limits of the City of Redondo Beach, established prior to April 12, 1915, extended into the Pacific Ocean and Bay of Santa Monica a distance of three miles from the shore line of the Pacific Ocean and ran southerly and parallel with the shore line of the Ocean a distance of three miles from said shore line. By said grant the State conveyed to said city all the tide and submerged lands lying in the Pacific Ocean and Bay of Santa Monica extending along the entire front of said city running a distance of three miles into the Pacific Ocean and Bay of Santa Monica.

5. By Act of the Legislature of the State of California, approved April 10, 1917, the State of California conveyed to the City of Venice all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

situated therein

> "below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries"

to be held by said city in trust for harbor purposes.

The boundaries of the City of Venice had prior to April 10, 1917, been established as extending into the

Pacific Ocean to the southwest boundary of the County of Los Angeles and thence running northwesterly along said county boundary to the point of beginning. The southwesterly boundary of the County of Los Angeles in the locality of the City of Venice extends into the Pacific Ocean a distance of three miles southwesterly of and parallel with a line drawn between Point Vicente and Point Dume, the headlands of the Bay of Santa Monica. Said grant conveyed to the City of Venice all tide and submerged lands extending into the Pacific Ocean a distance of three miles westerly of a line drawn between said two headlands, Point Vicente and Point Dume, and extending along the entire front of said city.

6. By Act of the Legislature of the State of California, approved April 10, 1917 (Stats. 1917, p. 90) the State of California granted to the City of Santa Monica all tide and submerged lands within the boundary of said city

> "held by said state by virtue of its sovereignty"

and situated therein

> "below the line of mean high tide of the Pacific Ocean"

to be held by said city in trust for harbor purposes.

The boundaries of the City of Santa Monica had been established prior to April 10, 1917, as extending southwesterly to a point in the westerly boundary line of the County of Los Angeles in the Pacific Ocean and thence extending along said county boundary line in the Pacific Ocean along the entire frontage of said city. (Article I, Section 1 of Santa Monica Charter approved by Stats. 1907, page 1,007.) The westerly

or southwesterly boundary of the County of Los Angeles in the vicinity of the City of Santa Monica extends into the Pacific Ocean a distance of three miles from a line drawn between Point Vicente and Point Dume, the two headlands of Santa Monica Bay and extends along a line parallel with and distant three miles from said line drawn between said two headlands. By said grant the State conveyed to the City of Santa Monica all tide and submerged lands extending into the Pacific Ocean a distance of three miles from a line drawn between Point Vicente and Point Dume and extending on a line parallel with and three miles distant from a line along the entire frontage of said City of Santa Monica.

7. By Act of the Legislature approved May 25, 1919 (Stats. 1919, p. 941), the State granted to the City of Hermosa Beach all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated therein

> "below the line of mean high tide of the Pacific Ocean"

to be held by said city in trust for harbor purposes.

The boundaries of said City of Hermosa Beach have been established prior to May 25, 1919, with the westerly or southwesterly boundary thereof extending into the Pacific Ocean to a line coincident with the westerly or southwesterly boundary of the County of Los Angeles. Said boundary of the County of Los Angeles extended a distance of three miles from a line drawn between Point Vicente and Point Dume, the two headlands of the Bay of Santa

Monica and extended along a line parallel with and three miles distant from said line drawn between said two headlands. By said grant the State conveyed to the City of Hermosa Beach all tide and submerged lands extending into the Pacific Ocean a distance of three miles from a line drawn from between said two headlands and running the entire frontage of said city along a line parallel with and three miles distant from a line drawn between said two headlands.

8. By Act of the Legislature of the State of California approved May 25, 1919 (Stats. 1919, p. 1011), the State of California granted to the City of Newport Beach all tide and submerged lands within the boundaries of said city

> "held by said state by virtue of its sovereignty"

and situated therein

> "below the line of mean high tide of the Pacific Ocean which border upon and are in front of the upland now owned by said city and such other upland as it may hereafter acquire"

to be held by said city in trust for harbor purposes.

The boundaries of said City of Newport Beach were established prior to May 25, 1919, with the westerly or southwesterly boundary thereof extending to a point three miles into the Pacific Ocean and thence running along a line parallel with and three miles from the shore of the Pacific Ocean along the entire frontage of said city. By said grant the State conveyed to said City of Newport Beach all tide and submerged lands situated in the Pacific Ocean extending a distance of three miles from and running on a line parallel with and three miles distant from

the shore of the Pacific Ocean along the frontage of said city.

9. By Act of the Legislature of the State of California, approved May 27, 1919 (Stats. 1919, p. 1359), the State of California granted to the City of Monterey all tide and submerged lands within the limits of said city

> "running along the entire waterfront . . . of said city, out to a depth of 60 feet at low tide water."

10. By Act of the Legislature of the State of California, approved March 21, 1917 (Stats. 1917, p. 18), the State of California conveyed to the City of National City certain tide and submerged lands lying within the boundaries of said City in the Bay of San Diego. Said Act provided in part:

> "WHEREAS, since the admission of California into the Union all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purpose of navigation, commerce and fishing; . . ."

Said grant conveyed to the City of National City all tide and submerged lands within the boundaries of said City lying between the line of mean high tide and the pierhead line in the said Bay as the same was then, or was thereafter established by the Federal Government.

Said grant to the City of National City is more fully described in Paragraph B-VI of the Second Affirmative Defense hereof.

11. By Act of the Legislature approved April 16, 1925 (Stats. 1925, p. 181), and extended by Act approved January 29, 1937 (Stats. 1937, p. 73), the State of California granted to the City of Santa Barbara all tide and submerged lands

> "held by said state by virtue of its sovereignty"

and situated therein

> "bordering upon and lying below the Pacific Ocean which are within the corporate limits of said city and seaward of the mean high tide line of the Pacific Ocean, as the same now exists"

to be held by said City in trust for harbor and park purposes.

The westerly boundary of the City of Santa Barbara extends into the Pacific Ocean and Santa Barbara Channel a distance of one-half mile from the shore and runs parallel with and one-half mile distant from the shore along the entire frontage of said City.

By said grant the state conveyed to the City of Santa Barbara all tide and submerged lands extending into the Pacific Ocean a distance of one-half mile from the shore and running along the entire frontage of said City along a line parallel with and distant one-half mile from said shore line.

Said grant to the City of Santa Barbara is more fully described in Paragraph B-III of the Second Affirmative Defense hereof.

12. By Act of the Legislature approved April 6, 1929 (Stats. 1929, page 117), the State of California granted to the City of Laguna Beach all tide and submerged lands within the corporate limits of said city

> "held by the State of California by vitrue of its sovereignty"

and situated therein

> "bordering upon, under and situated below the ordinary high-tide line of the Pacific Ocean or of any harbor, estuary, bay or inlet"

to be held by said city in trust for harbor purposes.

The westerly boundary of the City of Laguna Beach was established prior to April 6, 1929, as extending into the Pacific Ocean to the southwesterly boundary line of the County of Orange and running along said county boundary line in the Pacific Ocean along the entire frontage of said City. The southwesterly boundary line of the County of Orange extends into the Pacific Ocean to a line coincident with the southwesterly boundary line of the State of California. The southwesterly boundary of the State of California in the vicinity of the City of Laguna Beach extends a distance of three English miles into the Pacific Ocean and runs along a line parallel with and distant three English miles from a line between the headlands enclosing any bays or indentations thereof.

By said grant there was conveyed to the City of Laguna Beach all the tide and submerged lands lying in the Pacific Ocean extending therein a distance of three English miles from a line drawn between the headlands of Laguna Bay and running along a line parallel with and distant three English miles from a line drawn between said headlands.

13. By Act of the Legislature approved April 17, 1929 (Stats. 1929, p. 254), the State of California granted to Carmel Sanitary District, a sanitary dis-

trict of the State of California, all the tide and submerged lands

"held by said State by virtue of its sovereignty"

lying in the Pacific Ocean at the entrance of Carmel River and in the mouth and estuary of said river, and stating that

"said sovereign lands of the State of California being more particularly described as follows:"

then describing the boundaries of the granted lands with the westerly boundary thereof extending

"due west into the Pacific Ocean to the intersection of said line and the 20 fathom line; thence northerly along said 20 fathom line to the point of the intersection of said 20 fathom line and the westerly prolongation of the said section line between Sections Eleven (11) and Fourteen (14) . . ."

said Act concluding with these words:

"all said lands being sovereign lands of the State of California."

14. By Act of the Legislature of the State of California, approved June 9, 1931 (Stats. 1931, p. 1428) the State of California granted to the City of Pacific Grove all the tide and submerged lands

"contiguous to said City of Pacific Grove and bordering on or in the Bay of Monterey and bounded and described as follows"

with the westerly boundary described as extending

"to a point in the Bay of Monterey where the depth of water in said Bay is sixty (60) feet measured from mean low-tide level, thence southeasterly along a line in said Bay, which line shall

be at a constant depth of sixty (60) feet of water measured from the mean low-tide level of said Bay to the intersection with said corporate limit line produced."

15. By Act of the Legislature of the State of California approved May 2, 1943 (Stats. 1943, p. 1294), the State of California granted to the City of Avalon all tide and submerged lands lying within the corporate limits of said city

"held by said state by virtue of its sovereignty"

and situated therein

"bordering upon, in and under the Pacific Ocean, situated below the line of mean high tide of the Pacific Ocean"

to be held in trust by said City for harbor purposes.

The boundary of the City of Avalon was established prior to May 2, 1943, as extending from a given point in the shore line of the Pacific Ocean, thence to a point three miles out to sea, thence following the course of the shore line at a distance of three miles out to sea to a point of intersection with the prolongation of the easterly line of the City of Avalon.

By said grant the State conveyed to the City of Avalon all tide and submerged lands extending three miles into the Pacific Ocean and along a line parallel with and three miles distant from the shore along the entire frontage of said City.

16. Other grants were made by the State of California to municipalities and counties of tide and submerged lands lying in the Pacific Ocean or in entrances to or in bays, harbors, and rivers along the

coast of California, some of them being the following:

(a) To the Town of Eureka (Stats. 1857, p. 76)

(b) To the Town of Santa Cruz (Stats. 1871-72, p. 471)

(c) To the County of San Mateo (Stats. 1893, p. 42)

(d) To the Ctiy of Arcata (Stats. 1913, p. 699)

(e) To the County of Orange (Stats. 1919, p. 1138)

(f) To the City of Coronado (Stats. 1923, p. 85)

(g) To the County of Santa Barbara (Stats. 1931, p. 1742)

(h) To the City of San Buenaventura (Stats. 1935, p. 869)

(i) To the County of Santa Cruz (Stats. 1935, p. 1876).

III.

The several municipalities and counties to which tide and submerged lands have been granted by the State of California, as hereinabove set forth, have each expended vast sums of taxpayers' moneys in the construction of harbors and ports, and facilities related to the several trusts upon which each such grant by the State was made.

1. By way of illustration, the Cities of Long Beach, Los Angeles, Santa Barbara, San Diego, San Francisco and Oakland have reclaimed vast tracts of tide and submerged lands thus granted by the State to said cities, respectively, in the construction and improvement of their ports and harbors, as more particularly mentioned in the Second Affirmative Defense hereof.

2. Another illustration of the exercise of the ownership and the expenditure of large sums in the improvement of the tide and submerged lands by a municipality to which the State of California granted said lands, as aforesaid, is the case of the City of Long Beach. Subsequent to the grant by the State of California to said City of the tide and submerged lands, as aforesaid, said City constructed a breakwater commonly called its Rainbow Pier and a Municipal Auditorium thereon extending into the Pacific Ocean and Bay of San Pedro a maximum distance of 1400 feet from the shoreline. The construction of said breakwater, Rainbow Pier and Municipal Auditorium was commenced in October 1928 and the project was completed in November 1930 at a cost to the City of Long Beach in excess of $1,067,000.00. Said project was financed by the issuance and sale of general obligation bonds of the City of Long Beach. The pier is semi-circular in design, extending into the Ocean, as aforesaid, at the extreme front side thereof a maximum of 1400 feet from the mean high tide line. The area enclosed is approximately 47 acres of tide and submerged lands. The filled and reclaimed area upon which the municipal park and auditorium are located is approximately 8 acres.

The City of Long Beach made application to the War Department through its United States District Engineer's Office at Los Angeles, California, for a permit to construct said breakwater, Rainbow Pier and Municipal Auditorium, and said permit was duly granted and issued by said War Department.

3. Another illustration of an exercise of the rights of ownership by a municipal grantee and the expenditure of large sums in the improvement of the tide and submerged lands, is the dredging and construction of improve-

ments by the City of Long Beach in conjunction with the State of California and County of Los Angeles at the mouth of Alamitos Bay where it enters the Pacific Ocean. The work of improvement on the jetties was commenced in January 1941 and completed in March 1945 at a total cost of approximately $116,000.00, which was financed, 25% from the funds of the City of Long Beach, 25% from the funds of the County of Los Angeles, and 50% from the funds of the State of California. Said jetty extends into the Pacific Ocean from the line of high tide approximately 740 feet.

An application was made to the War Department through its United States District Engineer's Office at Los Angeles, California, for the construction of said jetty and improvements thereon, and said permit was duly granted to the City of Long Beach, County of Los Angeles, and State of California.

IV.

The State of California, pursuant to Acts of its Legislature, has, over a period of approximately 25 years, executed numerous oil and gas leases to various persons and corporations covering large tracts of tide and submerged lands owned by the State along the coast of California. In this connection, defendant alleges that:

1. By Act of the Legislature of the State of California, approved May 25, 1921 (Stats. 1921, Chap. 303, p. 404), all coal, oil, gas, and other mineral deposits belonging to the State of California are thereby reserved to the State. By Section 4 of said Act, the Surveyor General of the State of California was authorized, under rules and regulations prescribed by him, to grant permits with the exclusive right for a period not exceeding two years, to prospect for oil and gas on not to exceed 640 acres of

land, upon terms and conditions set forth in said Act. Among other things, said Act provides that:

> "Provided further, however, that in no case shall permits or leases be granted covering tide, overflowed or submerged lands fronting on an incorporated city, or for a distance of one mile on either side thereof;"

and also provides, in part, that:

> "Provided further, however, that in case of an application for a permit or a lease covering tide, overflowed or submerged land by anyone other than the littoral or riparian proprietor, said littoral or riparian proprietor shall have six months within which to file an application for a permit or lease, but if said littoral or riparian proprietor fails to comply with the requirements of this Act and its rules and regulations made in pursuance hereof, his preferential right shall thereupon cease and forever be terminated, and the original applicant shall be permitted to proceed with his application."

Said Act also provides that upon the establishment to the satisfaction of the Surveyor General that valuable deposits of oil and gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit, which lease shall be for a term of 20 years upon a royalty as set forth in said Act.

2. By Act of the Legislature of the State of California, approved June 1, 1923 (Stats. 1923, p. 593), said Act approved May 25, 1921, was amended and a provision was added that

> "If any littoral or riparian owner of land, without objection by the State of California or the United States of America or any of its officials, shall have

entered upon tide, overflowed, or submerged land, and for more than 10 years next preceding the passage of this Act, has been engaged in drilling the same, or has operated thereon, a producing well or wells, said littoral or riparian owner shall be entitled to a lease of such portion of such tide, overflowed, or submerged land as may be necessary for the drilling of uncompleted wells and for the deepening of wells now producing or now being drilled, that may hereafter become a producing well; provided, however, that application shall be made for such littoral or riparian owner within three months after the passage of this Act."

3. Pursuant to the provisions of the amendment approved June 1, 1923 by the California Legislature, as aforesaid, approximately seven leases were issued by the State of California to operators of wells located in the Summerland Oil Field, in Ventura County, California, where small producing wells had been drilled between the years 1897 and 1905.

(a) In the Summerland field, the State of California granted leases, pursuant to the 1923 amendment to the Leasing Act above mentioned, to seven lessees, being the following:

State Lease No.	Issued to
16	G. F. and Agnes S. Becker
17	Submarine Oil Company
18	San Domo Gasoline Co.
19	Jenny S. Herron
21	Seaside Oil Company
22	G. E. Lewis

All said wells in the Summerland oil field have since been abandoned by the lessees thereof and there are no wells producing from, in or under tide or submerged lands in said field at the present time.

A map of said leases in the Summerland Oil Field is set forth as follows:

(b) The Summerland Oil Field operations in and under the tide and submerged lands in the Pacific Ocean and Santa Barbara Channel were known to the United States Department of Interior as early as the year 1907. By a report prepared by Ralph Arnold entitled "Geology & Oil Resources of Summerland District, Santa Barbara County, California" published in Bulletin No. 321 of the Department of the Interior, United States Geological Survey (Government Printing Office 1907) it is reported as to the Summerland Oil Field that:

> "* * * the development in 1896 began along the beach and finally extended out toward the ocean, the wells being drilled from wharves built out over the ocean * * *
>
> "There were 22 companies operating and 12 wharves in use in 1899. Development continued up to about 1901 or 1902, at which time there were still about 20 companies in the field. Since 1902, owing to certain adverse conditions of pricing and marketing, the field has been declining. At the end of 1903 there were 198 producing wells, 114 not producing, and 100 abandoned * * * At the present time (October, 1906) there are 189 producing wells out of the 412 which at one time or another have been drilled in this field. The companies still operating, 14 in number, are G. F. Becker Oil Company, Knapp & Hassinger (Royalty Oil Company), J. C. Lillis, Lillis Oil Company, Montecito Improvement Company, Miller & McFarland, North Star Oil Company (J. C. Lillis), Oxnard Oil Company, Potomac Oil Company, Sea Cliff Oil Company, Sea Side Oil Company,

Southern Pacific Railroad Company, Southern Pacific Railroad Company (Kern Trading & Oil Company) Sunset Oil Company, and J. C. Wilson."

Attached to said Arnold report published in said Department of Interior Bulletin No. 321 is a plat showing the location of the oil field structure by contours and the distance below sea level of the upper or main sand, together with the location of the wharves built out into the Santa Barbara Channel of the Pacific Ocean and the location of the oil wells thereon. A copy of said plat is set forth as follows:

4. Pursuant to the provisions of said Act of May 25, 1921, between the years 1926 and 1929 approximately 208 persons filed applications for prospecting permits with the Surveyor General. Said applications each covered substantial tracts of tide and submerged lands lying in various parts of the Pacific Ocean, Santa Barbara Channel, Santa Monica Bay, San Pedro Bay, and San Pedro Channel.

Seven of said applicants, whose applications covered tide and submarged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in the vicinity of Seacliff, County of Ventura, were refused permits applied for by the Surveyor General. Denial was based upon the ground that granting the same would authorize the conduct of business in and upon tide and submerged lands, interfering with navigation and fisheries and that said Act of May 25, 1921, as amended, was in excess of the constitutional authority of the Legislature. Each of said applicants thereon filed proceedings in the Supreme Court of the State of California for writs of mandamus to compel the Surveyor General to grant permits so applied for. In the case of *Boone v. Kingsbury* (1928), 206 Cal. 148, 273 Pac. 797, cert. den. 280 U. S. 517, the Supreme Court of California upheld the validity of said Act of May 25, 1921, as amended, and held that the State of California was the owner of tide and submerged lands in the Pacific Ocean covered by said applications for prospecting permits, and that the Legislature was empowered to grant leases in order

> "to reduce to useful purposes oil, gas and mineral deposits reposing beneath the ocean's bed."

The Supreme Court of California, in *Boone v. Kingsbury, supra,* considered the cases cited by this Honorable Court holding the states to have

> "the ownership of and control over tide and submerged lands within their borders"

and quoted from decision of *Illinois Central Railroad Company v. Illinois,* 146 U. S. 387, in part, as follows:

> "The ownership of and dominion and sovereignty over lands covered by tide waters, within the limits of the several states, belong to the respective states within which they are found, . . ."

The Supreme Court of California there quoted from the decision of this Honorable Court in *Hardin v. Jordan,* 140 U. S. 371, in part, as follows:

> "Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State —a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation and fishery—and cannot be retained or granted out to individuals by the United States."

The Court thereupon granted writs of mandamus ordering the Surveyor General of the State of California to issue prospecting permits to named applicants involved in said proceedings.

5. Following the decision of the Supreme Court of California in *Boone v. Kingsbury, supra,* and pursuant to the Act of the Legislature approved May 25, 1921, as

amended, as aforesaid, numerous of said 208 applicants for prospecting permits completed their prospecting and development work and, pursuant to the requirements of said Act of the Legislature, the Surveyor General granted leases to a substantial number of said 208 applicants.

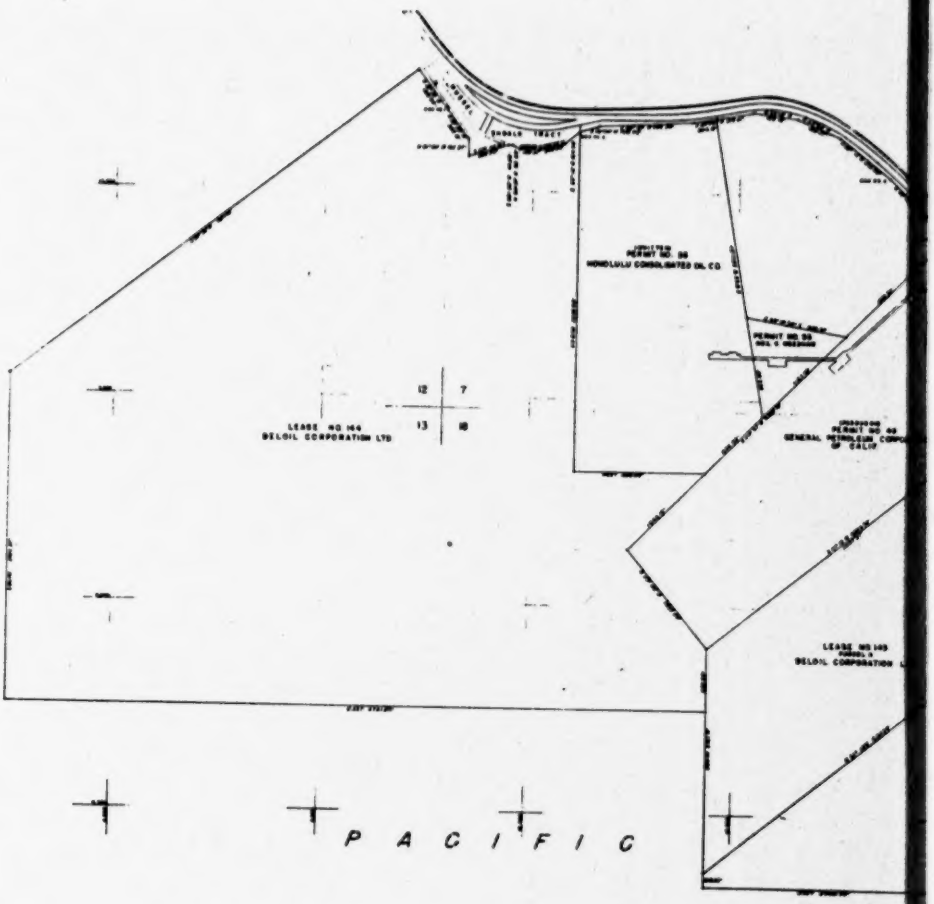
The balance of said applicants failed to perfect their rights by prospecting and development and the rights of those applicants lapsed.

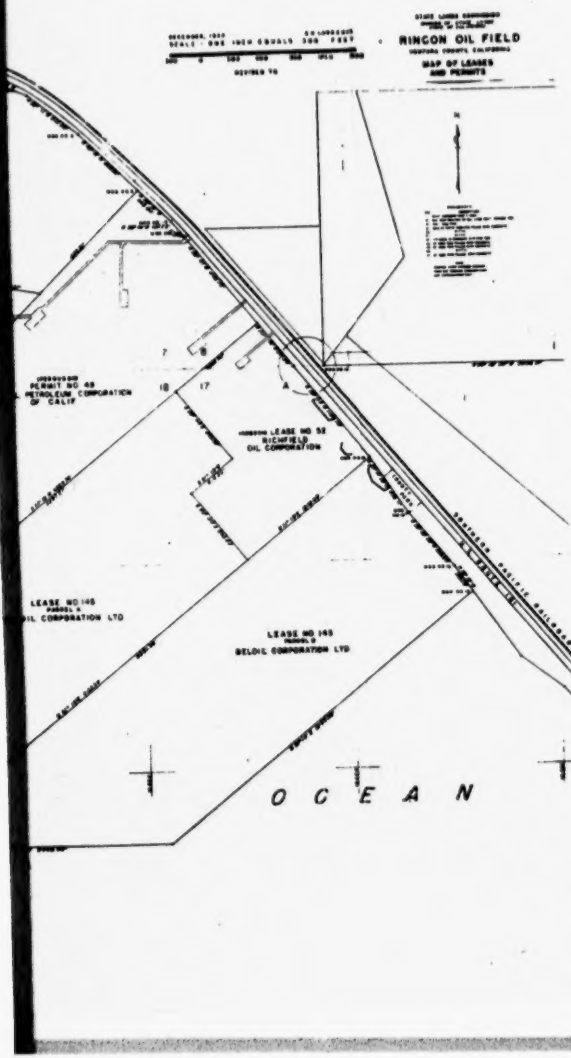
The submerged land oil fields in which the State of California granted State leases on applications filed between the years 1926 and 1929, and certain of the leases issued by the State of California thereon (in addition to the Summerland Oil Field above mentioned), which are hereinafter referred to as "Chapter 303 Leases," being granted under Chapter 303 of the 1921 Act, are the following:

(a) In the Rincon (Seacliff) Field, in Ventura County, the State has granted Chapter 303 leases, which are still in force, among others, to the following:

State Lease No.	Issued to	Date
48	General Petroleum Company	5-19-30
52	Richfield Oil Company	4-17-29
55	N. C. Needham	5-15-31
56	Honolulu Oil Corporation	4-21-31

A map showing said leases situated in the Pacific Ocean and Santa Barbara Channel thereof, in Santa Barbara County, at Rincon oil field is set forth as follows:

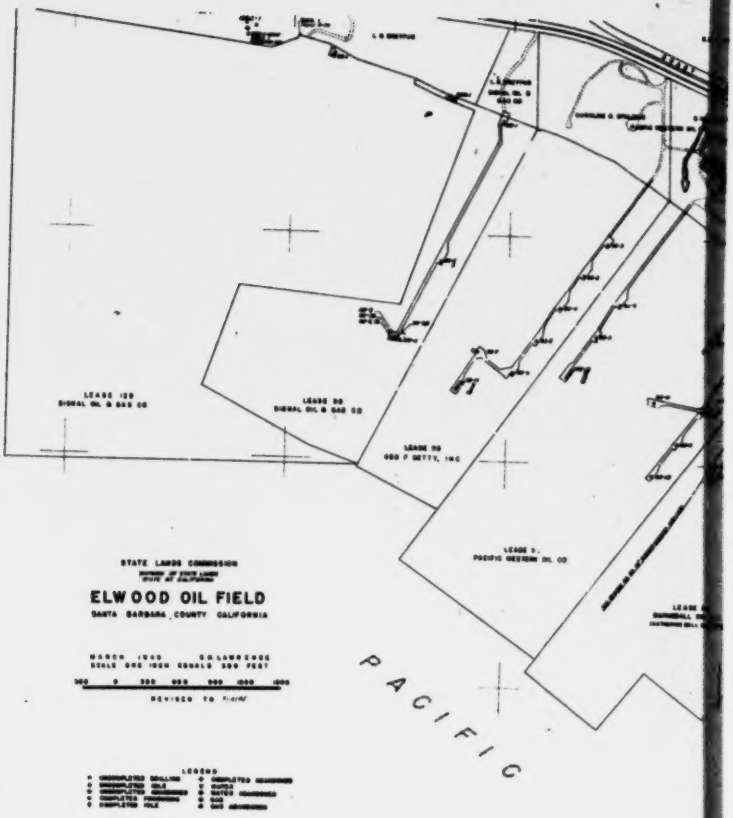

LEASE NO 144
DELOIL CORPORATION LTD
12
7
13
18
PACIFIC

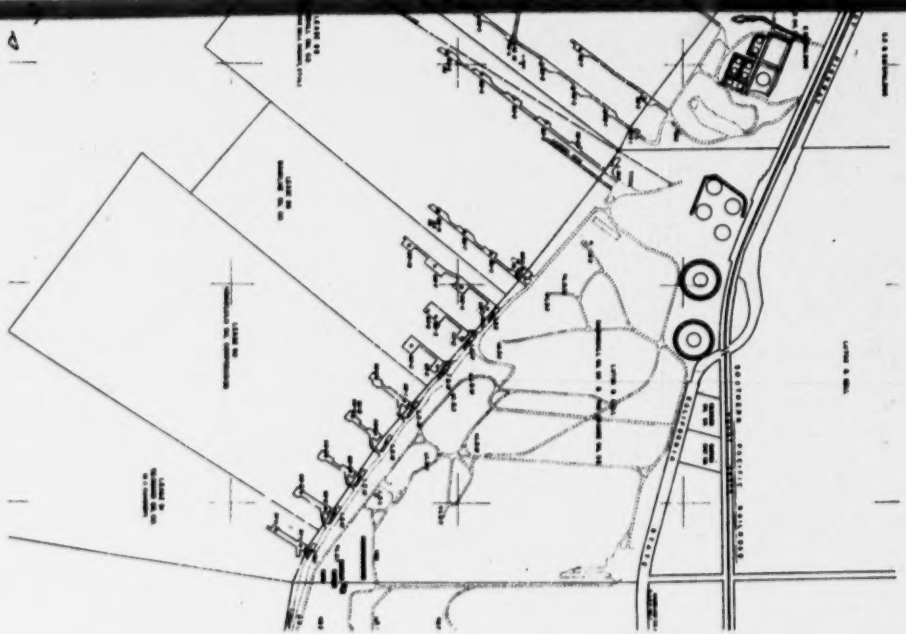

RINCON OIL FIELD
MAP OF LEASES AND PERMITS
PERMIT NO 49
PETROLEUM CORPORATION OF CALIF
LEASE NO 52
RICHFIELD OIL CORPORATION
LEASE NO 145
OIL CORPORATION LTD
LEASE NO 145
DELOIL CORPORATION LTD
OCEAN

(b) In the Elwood oil field lying in the Pacific Ocean and Santa Barbara Channel, in Santa Barbara County, the State of California has issued the following Chapter 303 leases which are still in force:

State Lease No.	Issued to	Date
88	Katharine Bell Cheney	9-30-29
89	Bankline Oil Company	10-22-29
90	Honolulu Oil Corporation	10-23-29
91	C. J. Mahoney	11-12-29
92	Pacific Western Oil Company	9-15-29
93	George F. Getty	11-22-29
98	William L. Appelford (Signal Oil & Gas Company)	7-29-30

A map showing said leases in the Elwood oil field is set forth as follows:

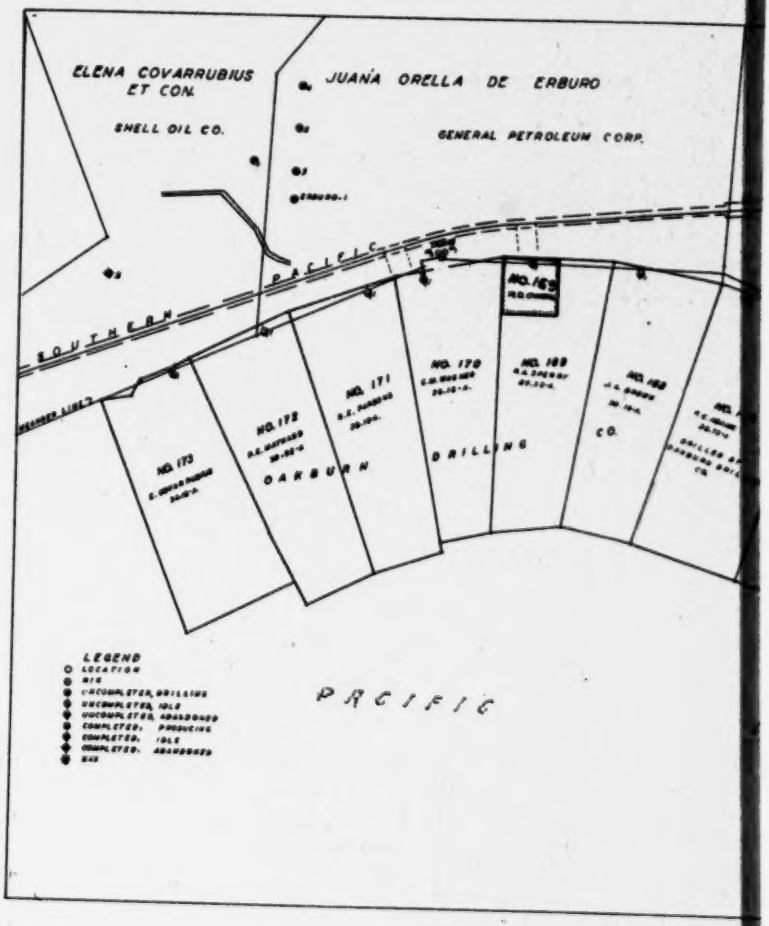

STATE LANDS COMMISSION
ELWOOD OIL FIELD
SANTA BARBARA COUNTY CALIFORNIA
PACIFIC
OCEA

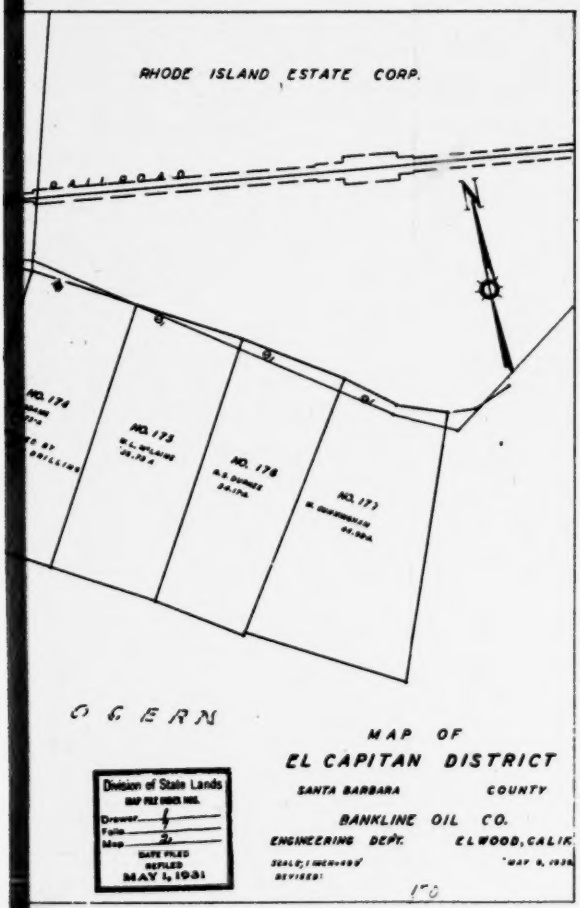


(c) The State of California has granted oil and gas leases covering tide and submerged lands in the Pacific Ocean and Santa Barbara Channel, El Capitan District, Santa Barbara County. Said Chapter 303 leases were granted to the following lessees:

State Lease No.	Issued to
168	J. A. Brown
169	R. A. Sperry
170	C. M. Wagner
171	B. E. Parsons
172	R. E. Maynard
173	E. Covarrubius
174	F. C. Adams
175	W. L. McClaine
176	R. S. Durkee
177	W. Cunningham

A map showing the location and areas of said State leases in the El Capitan District is set forth as follows:


ELENA COVARRUBIAS
ET CON.
SHELL OIL CO.
JUANA ORELLA DE ERBURO
GENERAL PETROLEUM CORP.
PACIFIC
SOUTHERN
No. 165
No. 173
No. 172
No. 171
No. 170
No. 169
No. 168
OAKBURN
DRILLING
CO.
PACIFIC
LEGEND


RHODE ISLAND ESTATE CORP.
RAILROAD
N
NO. 174
NO. 173
NO. 176
NO. 171
O G E R N
MAP OF
EL CAPITAN DISTRICT
SANTA BARBARA COUNTY
BANKLINE OIL CO.
ENGINEERING DEPT. ELWOOD, CALIF.
Division of State Lands
MAP FILE INDEX NOS.
Drawer 4
Folio
Map 21
DATE FILED
REFILED
MAY 1, 1931
170

Each of said Leases No. 168 to 177, inclusive, in the El Capitan District has been abandoned by the lessees thereof, except a portion of 169 now under lease to R. D. Owens.

(d) The State of California has granted Chapter 303 oil and gas leases covering tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel, in the Carpenteria oil field. Said Chapter 303 leases are as follows:

State Lease No.	Issued To
120	Lucien M. Higgins
122	Collie M. Grimes
123	Theresa Franklin
124	Kittie C. Bailard
125	Myrtle Bailard
126	Catharine Bailard
127	B. F. Bailard
128	Mary B. Hall
129	Charles E. Bailard
130	R. W. Caspers
162	W. R. Varick
163	Thomas N. Fish
164	Henry B. Fish
165	Fish & Sattler
190	Justin S. Snow
202	Verne Robinson
206	S. Napton

Each of said Leases No. 168 to 177, inclusive, in the El Capitan District has been abandoned by the lessees thereof, except a portion of 169 now under lease to R. D. Owens.

(d) The State of California has granted Chapter 303 oil and gas leases covering tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel, in the Carpenteria oil field. Said Chapter 303 leases are as follows:

State Lease No.	Issued To
120	Lucien M. Higgins
122	Collie M. Grimes
123	Theresa Franklin
124	Kittie C. Bailard
125	Myrtle Bailard
126	Catharine Bailard
127	B. F. Bailard
128	Mary B. Hall
129	Charles E. Bailard
130	R. W. Caspers
162	W. R. Varick
163	Thomas N. Fish
164	Henry B. Fish
165	Fish & Sattler
190	Justin S. Snow
202	Verne Robinson
206	S. Napton

A map showing the location and approximate area of said leases in the Carpenteria oil field is set forth as follows:



CARPINTERIA AREAS
CALIFORNIA

LEGEND

SCALE 1" = 1000 FEET

April 2, 1929

A map showing the location and approximate area of said leases in the Carpenteria oil field is set forth as follows:

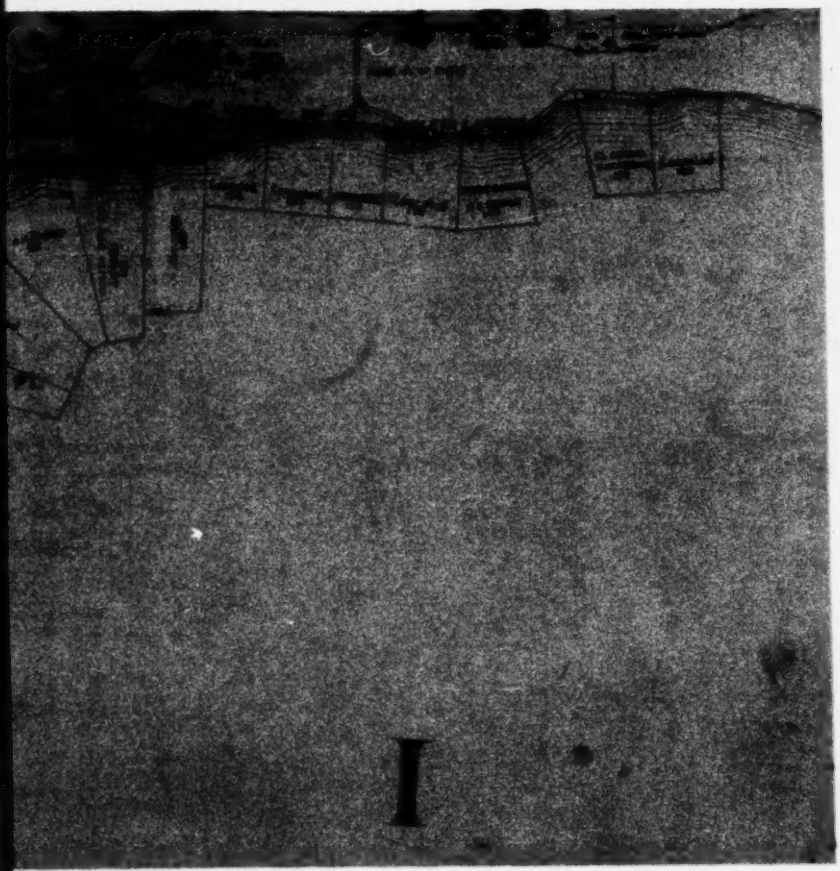
RANCH
G.R. Raymond
C.E. Bullard
Mary B. Hall
A.F. Bullard
C. Bullard
North Ballard
Catherine Ballard
Mary B. Hall
Jennie M. Collin
Thomas Preston
L.N. Ballard
Minnie Ballard
Thomas Preston
C. Ballard
Catherine Ballard
North Ballard
Central Ballard
C.E. Ballard

Each of said leases in the Carpenteria oil field has been abandoned by the lessees thereunder.

(e) The State of California has granted Chapter 303 oil and gas leases in the Goleta Field covering tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in Santa Barbara County. The lessees under said Chapter 303 Leases are the following:

State Lease No.	Issued to
138	R. R. Crandall
140	Robert Bowles and R. E. Pierce
141	A. H. Bishop
142	J. S. Main
143	D. V. Main
149	H. W. Abruns
159	C. L. Vivian
160	Doyle Petroleum Company
161	William H. Taylor
191	N. C. Campbell

A map showing the location of said leases in the old Goleta Field is set forth as follows:


I

All Chapter 303 Leases covering tide and submerged lands in the Goleta Field above mentioned, as shown on the foregoing map, have been abandoned and cancelled.

6. The Legislature of the State of California passed an urgency measure approved January 17, 1929 (Stats. 1929, p. 11), prohibiting the Surveyor General from ever granting any permit to prospect or drill for oil or gas in or upon any tide or submerged lands upon an application made between the time of approval of said Act, to wit, January 17, 1929, and September 1, 1929.

A proviso was enacted that said prohibition shall not be deemed to prevent any littoral owner from exercising the preferential right given by said Act nor to affect the rights of any holder of any permit or lease theretofore issued and then outstanding under the Act of May 25, 1921, nor of any applicant for such permit or lease who had theretofore fully complied with the provisions of the Act.

Likewise, said Act of January 17, 1929, prohibited the Surveyor General from making any lease or receiving any application for lease upon competitive bidding under Section 8 of said Act of May 25, 1921.

The Legislature there declared the emergency to rest upon the fact that the Surveyor General since sometime in the year 1927 had refused to file any applications for or grant any permits

"on the tide and submerged lands of the State"

and that but for such refusal a much greater area of tide and submerged lands would have been covered by such applications; that the Supreme Court had rendered its decision on December 31, 1928, holding the Act of May 25, 1921, to be valid; that since such decision was rendered,

the Surveyor General had received numerous inquiries in regard to the procedure to be followed in order to obtain permits for tide and submerged lands, and that large numbers of applications were expected to be made; that the Legislature believed

"the tide and submerged lands of the State"

should not be open for exploitation and prospecting or for production of oil and gas; that the Legislature desires an opportunity to consider necessary amendments to the Act of May 25, 1921.

Thereafter, the Legislature, by Act approved May 28, 1929 (Stats. 1929, p. 944), amended the Act of May 25, 1921, by adding a new Section 23 thereto, providing that on and after September 1, 1929, no application for a permit to prospect for oil or gas shall be received nor any such permit granted or issued by the State, or any official thereof, or by any political subdivision of the State, covering tide or submerged lands. It was provided, however, that said amendment should not be deemed to apply to any applicant for a prospecting permit who had made application on or prior to January 17, 1929, or with respect to a littoral owner having preferential rights and exercising them on or before a specified date. Said Act likewise prohibited the granting of any lease for drilling for oil or gas or for the production thereof covering any tide or submerged lands, protecting, however, the person who had complied with the Act prior to January 17, 1929, and the preferential rights of the littoral owner.

Said Act approved May 28, 1929, defined the term "submerged and overflowed lands", as used in said Act, that it

> "shall be deemed and construed as applying only to the *bed of the ocean* or other lands over which the tide of the ocean ebbs and flows."

7. No prospecting permits have been issued for drilling oil and gas into or upon the tide and submerged lands of the State of California, and no oil or gas leases of such tide or submerged lands have been issued or authorized by the State since the effective date of said 1929 legislation last above mentioned, except as hereinafter described.

8. The Legislature of the State of California in the year 1931 amended Political Code Section 675 granting the Director of Finance power to lease, on such terms as he should prescribe, any State land for the production of oil and gas. (Stats. 1931, p. 846.) However, this legislation was defeated by referendum to the people.

9. By Act of the Legislature approved May 26, 1933 (Stats. 1933, p. 1523), Section 12 of the Act of May 25, 1921, was amended to authorize the Surveyor General of the State of California to negotiate agreements compensating the State of California for drainage from wells upon private lands draining oil and gas from lands owned by the State of California. Said Act reads, in part, as follows:

> "And provided further, that whenever it appears to the Surveyor General that wells now drilled upon private lands are draining oil and gas from lands owned by the State of California upon which drilling is now prohibited by law, the Surveyor General is hereby authorized and empowered on behalf of the State of California to negotiate in the name of and on behalf of the State of California, agreements whereby the State of California shall be compensated for such drainage."

10. Pursuant to said 1933 amendment quoted in the last preceding subparagraph hereof, the State of California entered into a number of "easement agreements" with

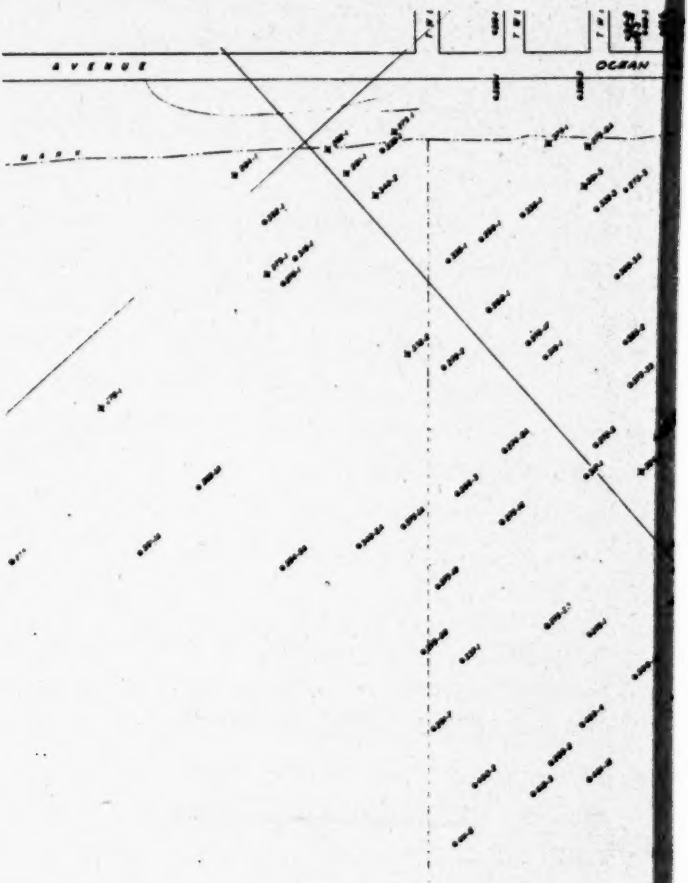
individuals or corporations, said easement agreements being Nos. 272-411, which were issued by the State of California, through its Division of Finance, one on December 30, 1933, and the balance on March 1, 1934, except for two in 1938 and four in 1940, being the following:

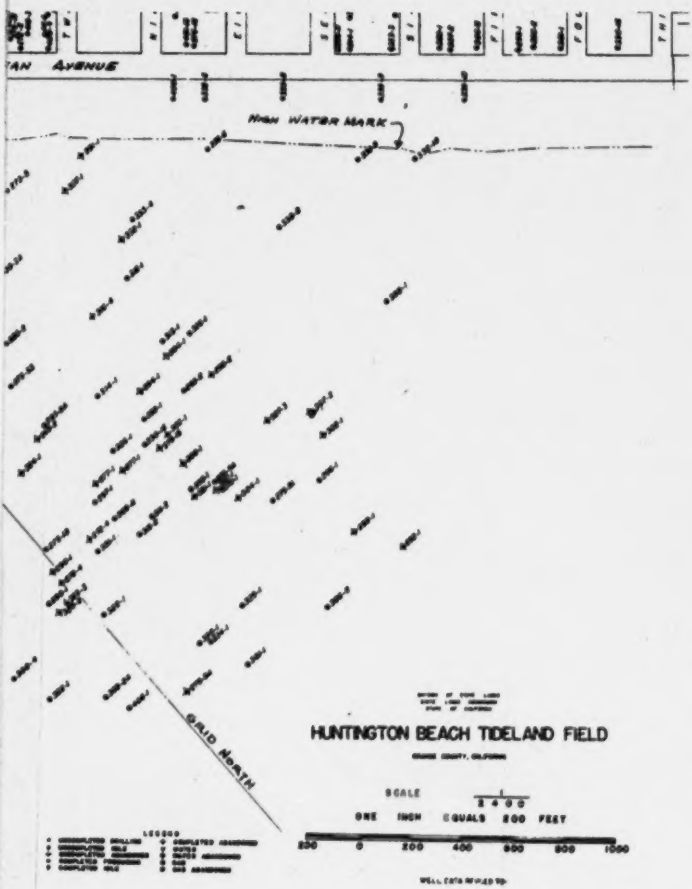
Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
272	Roscoe R. Oakes, et al. (formerly Termo Co.)	12-30-33	Cancelled
274	Wilshire Oil Co. (Ambassador Petroleum)	3-1-34	
275	Wilshire Oil Co.	"	
276	Reading Oil Company	"	
278	Camro Oil Company	"	
279	Macroo Oil Company	"	
280	Simaroo Oil Company	"	
281	Vicaroo Oil Company	"	
282	McVicar-Rood	"	
283	McVicar Rood, Richards & Rowan	"	
277	Montana Petroleum Company	"	Cancelled
284	Hammil Oil Corporation	"	
285	Milton Oil Corporation	"	
286	M & H Oil Company	"	
287	McVicar Rood Allen Well	"	Cancelled
288	M. A. B. Oil Company	"	
291	Mar Rico Oil Company	"	
289	Ocean Front Oil Company	"	

Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
293	The Petrol Corporation	"	
295	Chas. W. Camp	"	
297	Centralia Oil Company	"	
298	Wilshire Annex Oil Company	"	Cancelled
299	Benito Huntington Oil Company	"	
300	J. H. Marion	"	
301	O. D. Oil Company	"	
306	Huntington Signal Oil Company	"	
309	Huntington Shore Oil Company	"	
310	The Petrol Corporation	"	
311	The Petrol Corporation	"	
312	West Shore Petroleum Co.	"	
313	Minnesota Oil Company	"	
314	Beloil Corporation	"	Cancelled
315	Beloil Corporation	"	
317	McVicar Rood	"	
318	Beloil Corporation	"	
319	Beloil Corporation	"	
320	The Petrol Corporation	"	
322	The Petrol Corporation	"	
324	Signal Royalties Company	"	
325	Tide Petroleum	"	
326	J. H. Marion	3-1-34	
329	O. D. Oil Company	"	
330	Milton Silverstone	"	
331	Ruchti Oil Company	"	
333	H. B. Oil Company	"	
334	Western States Drilling Company	"	

Easement No.	Present Lessee's Name	Date of Lease	Status of Easement
335	O. R. Howard and Company	"	
336	The W. K. Company	"	
337	Roscoe F. Oakes, et al., (Formerly Termo Company)	"	
340	Lido Petroleum Company	"	
352	Orco Oil Company	"	
368	Tower Petroleum	"	
290	The Petroleum Company	"	Cancelled
292	Doyle Petroleum	"	"
294	Smith & Dea	"	"
296	Cather & McCallen	"	"
302	C. D. Cather	"	"
303	The Petrol Corporation	"	"
304	Signal Oil Company	"	"
307	Sec. First Nat'l of L. A.	"	"
308	Mohave Petroleum Company	"	"
316	Beloil Corporation, Ltd.	"	"
321	A. D. Mitchell	"	"
322	Petrol Corporation	"	"
323	Fortuna Petroleum Corporation	"	"
327	Morton L. Brown	"	"
332	Sierra Huntington Oil Company	"	"
379	Lido Petroleum Company	"	"
400	Wilshire Oil Company		11/7/38
401	Wilshire Oil Company		11/7/38
407	Surf Associates, Inc.		4/9/40
409	Roscoe F. Oakes, et al.		4/9/40
410	Roscoe F. Oakes, et al.		4/9/40
411	Roscoe F. Oakes, et al.		4/9/40

A map showing the location of each well covered by each such numbered "easement agreement" is set forth as follows:


AVENUE
OCEAN


AN AVENUE
HIGH WATER MARK
GRID NORTH
HUNTINGTON BEACH TIDELAND FIELD
SCALE
1 2400
ONE INCH EQUALS 200 FEET
200 0 200 400 600 800 1000
LEGEND

11. An Act passed both Houses of the 1935 Legislature of the State of California, known as Assembly Bill No. 1684, granting owners of littoral lands the exclusive right to apply for and secure from the State of California leases to drill slant wells into and to produce oil and gas from tide and submerged lands in the Pacific Ocean and elsewhere upon a minimum 1/6th royalty to the State. This measure was vetoed by the Governor of the State of California.

12. A measure known as Proposition No. 4 was placed on the November 3, 1936, General Election ballot. Said Proposition No. 4 likewise granted owners of littoral lands the exclusive right to apply for and secure from the State of California leases to drill slant wells into and to produce oil and gas from tide and submerged lands in the Pacific Ocean and elsewhere, upon a minimum 1/7th royalty to the State. This initiative proposition was defeated by a majority of the electors voting at said election on November 3, 1936.

13. In the year 1938 the Legislature of the State of California enacted a "State Lands Act of 1938" (Stats. Ex. Sess. 1938, Chapter 5, Page 23) being a comprehensive act relating to lands owned by the State of California. A State Lands Commission was thereby created vested with the administration of and jurisdiction over state lands, including oil, gas and other mineral lands covering uplands as well as tide and submerged lands.

Special provision is made in Article 6 of said State Lands Act of 1938 for making oil and gas leases on tide

and submerged lands. Section 85 of said Article 6 provides in part, as follows:

> "No political subdivision of this State or any city or county, or any official of either or any of them shall grant or issue any lease * * * vesting authority in any person to take or extract oil or gas from tide or submerged lands, whether filled or unfilled, of which the State is the owner, or from which the State has the right to extract oil or gas or both."

By Section 86 the State Lands Commission is authorized to lease tide and submerged lands only in the event it is known or believed that such lands contain oil or gas deposits which may be or are being drained by means of wells on adjacent lands not owned by the State. In the event such a lease is made, drilling and operating may only take place from an upland or littoral site and be slant-drilled into the tide or submerged lands covered by the lease, or drilled upon filled lands. All such leases of tide and submerged lands must be made upon competitive bidding.

Section 92 of the said State Lands Act of 1938 requires the Commission to institute action against any person drilling or preparing to drill wells upon or into tide or submerged lands and to enjoin such operations.

The State Lands Act of 1938 was incorporated into Public Resources Code by Act of the 1941 Legislature (Stats. 1941, Chapter 548, Page 1902). The sections of the State Lands Act of 1938 relating to the making of oil and gas leases on tide and submerged lands above men-

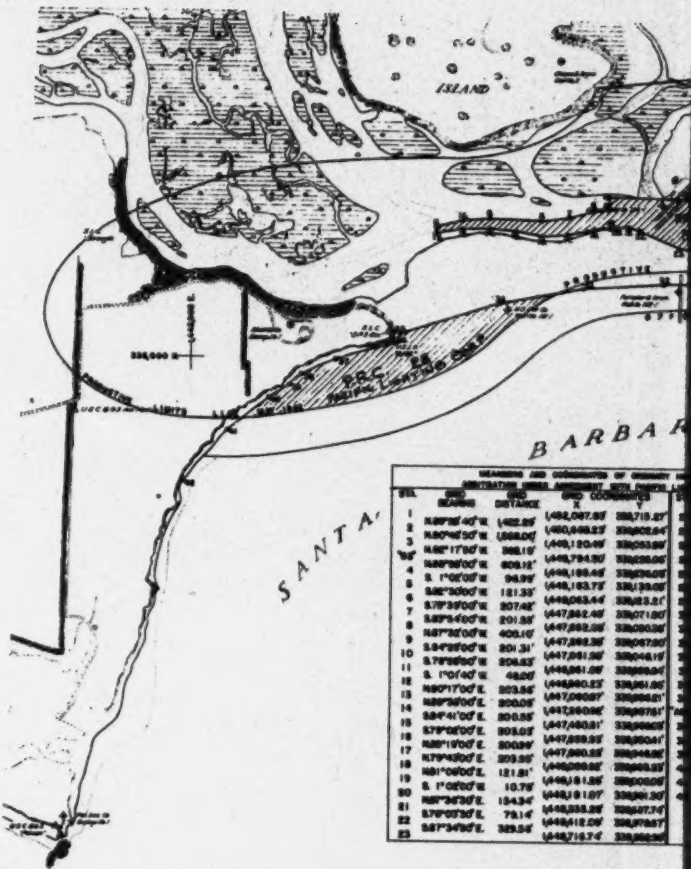
tioned are now contained in Public Resources Code Sections 6871-6878.

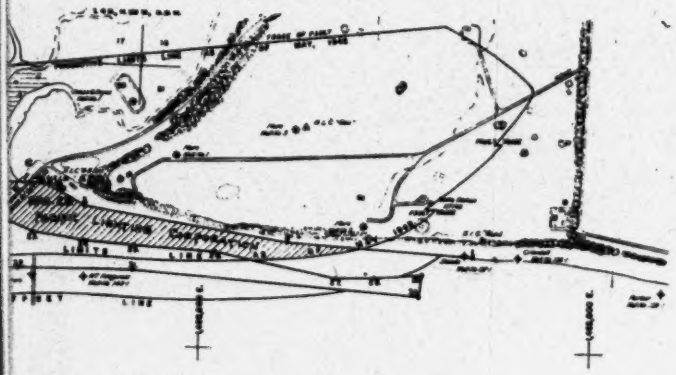
14. Pursuant to the State Lands Act of 1938 and Public Resources Code Section 6871, *et seq.*, the State Lands Commission has executed the following oil and gas leases covering tide and submerged lands lying in the Pacific Ocean, and Santa Barbara Channel thereof, or in the Pacific Ocean and Bay of San Pedro thereof, or in the Pacific Ocean or submerged lands lying in and under navigable rivers (being hereinafter referred to as "P. R. C. leases") as follows:

(a) *In the Goleta Oil field:*

P. R. C. Lease No.	Issued to	Date
28	Pacific Lighting Corporation	4-30-42

Said P. R. C. Lease No. 28 to Pacific Lighting Corporation is depicted on the map of the Goleta Oil Field as follows:


ISLAND
SANTA
BARBA



RA CHANNEL

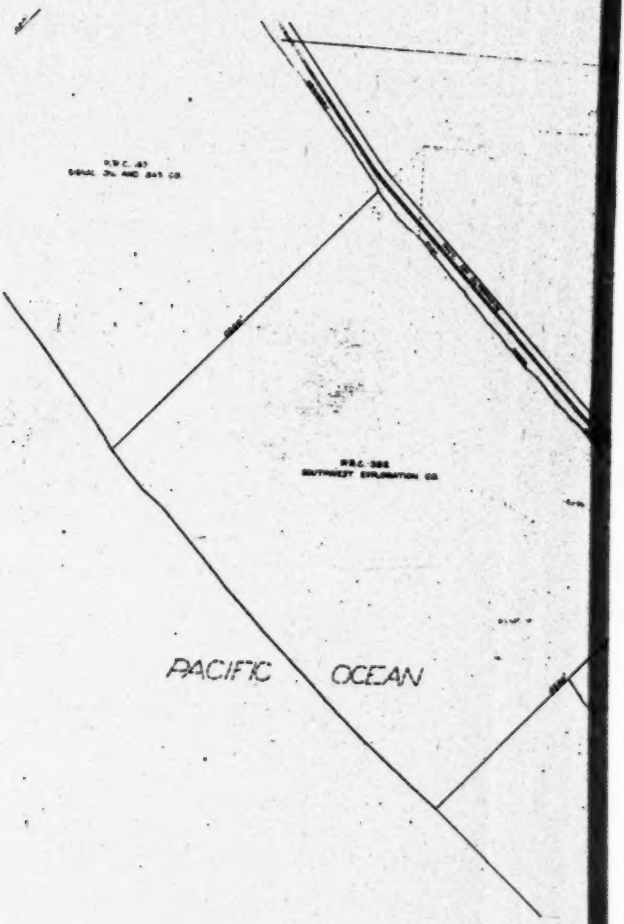
SEG.	BEARING	DISTANCE	GRID COORDINATES X	Y
23	S.6°17'30"E.	402.77'	(448,716.74'	338,888.96'
24	S.89°04'30"E.	384.80'	(449,114.53'	338,798.05'
25	S.88°58'30"E.	619.81'	(449,498.40'	338,790.27'
26	S.79°35'00"E.	936.00'	(450,118.88'	338,722.28'
27	N.89°00'00"E.	302.31'	(451,034.18'	338,537.28'
28	N.84°24'00"E.	391.72'	(451,338.44'	338,542.50'
29	S. 5°56'30"E.	170.28'	(451,398.44'	338,577.77'
30	N.88°54'19"E.	2,257.24'	(451,575.87'	338,540.74'
31	N.89°25'00"E.	888.26'	(453,698.06'	338,577.28'
32	S.89°48'30"E.	617.80'	(448,601.13'	338,586.80'
33	S.80°08'30"E.	941.22'	(447,985.27'	338,541.84'
34	S.72°42'10"E.	804.19'	(447,383.72'	338,430.88'
35	S.89°04'10"E.	83.14'	(448,098.37'	338,191.84'
36	S.67°58'40"E.	61.36'	(448,880.27'	338,1158 '
MSC	S.73°15'00"E.	406.00'	(448,495.40'	338,088.57'
37	S.89°25'00"E.	898.00'	(448,10078'	337,989.50'
38	S.50°10'00"E.	123.00'	(448,840.71'	337,870.22'
39	S.56°35'00"E.	181.00'	(448,794.72'	337,790.15'
40	S.51°40'00"E.	405.00'	(448,890.87'	337,698.13'
41	S.40°25'00"E.	488.00'	(448,274.87'	337,448.17'
42			(444,981.90'	337,084.79'

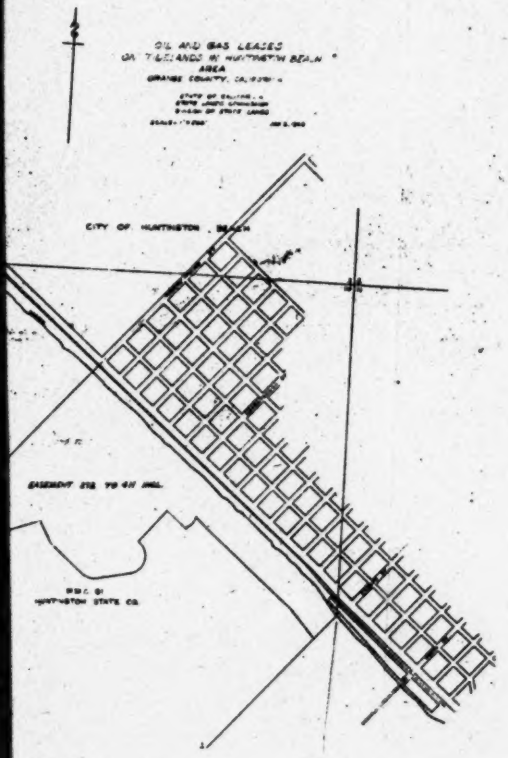
GOLETA GAS FIELD

SANTA BARBARA COUNTY
CALIFORNIA

P. R. C. Lease No.	Issued to	Date
(b) *In the Huntington oil field:*		
91	H. R. Hamilton, *et al.*, Huntington State Company	4-21-43
163	Signal Oil & Gas Co.	11-15-44

Said P. R. C. Leases Nos. 91 and 163 are shown on the map set forth as follows:


P.R.C. 383
SOUTHWEST EXPLORATION CO.
PACIFIC OCEAN


CITY OF HUNTINGTON BEACH

P. R. C. Lease No.	Issued to	Date
(c) *In the Rincon Oil Field:*		
144	Beloil Corporation, Ltd.	6-19-44
145	Beloil Corporation, Ltd.	6- 5-44

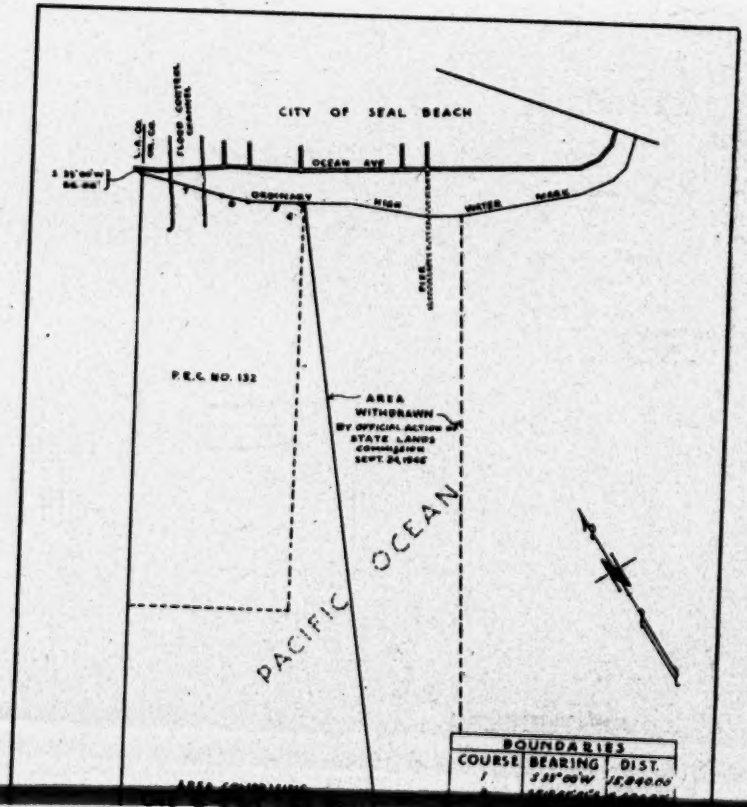
Said P. R. C. Leases Nos. 144 and 145 are depicted on the map of the Rincon Oil Field opposite page 764.

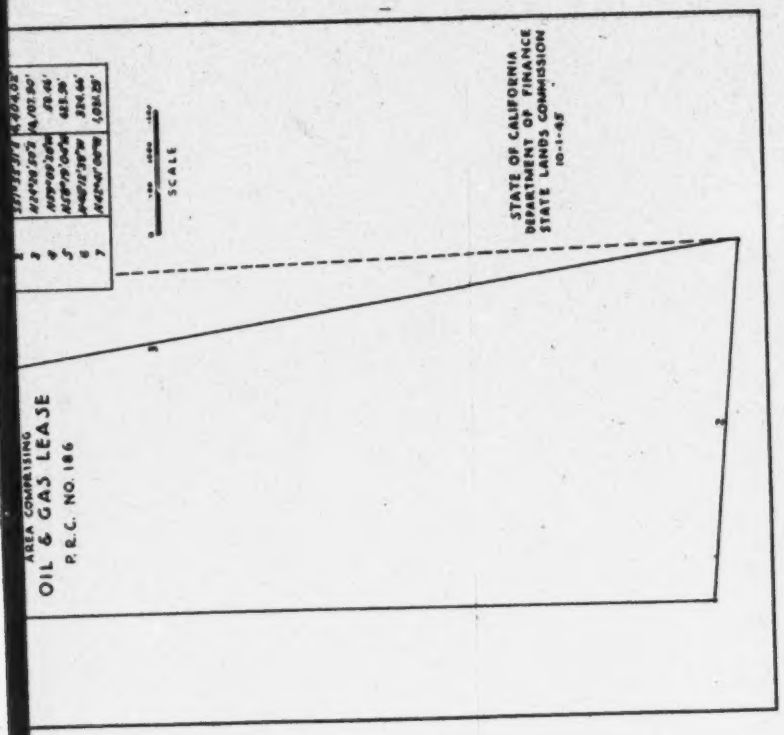
P. R. C. Lease No.	Issued to	Date
(d) *In the Elwood oil field:*		
129	Signal Oil & Gas Company	1-27-44

Said P. R. C. Lease No. 129 is depicted on the map of the Elwood Oil Field shown opposite page 766.

P. R. C. Lease No.	Issued to	Date
(e) *In the Seal Beach Oil Field:*		
132	Gilco, Inc.	1-27-44
186	Marine Exploration Company	9-24-45

Said P. R. C. Leases Nos. 132 and 186 are depicted on the map set forth as follows:


CITY OF SEAL BEACH
L.A. CO. FLOOD CONTROL CHANNEL
OCEAN AVE
ORDINARY HIGH WATER MARK
PIER
P.R.C. NO. 132
AREA WITHDRAWN BY OFFICIAL ACTION OF STATE LANDS COMMISSION SEPT. 24, 1964
PACIFIC OCEAN
BOUNDARIES
COURSE
BEARING
DIST.
1
S 33° 00' W
18,040.00



P. R. C. Lease No.	Issued to	Date
	(f) *In the Rio Vista Gas Field:*	
415	Standard Oil Company of California	6- 3-40
	(g) *In the McDonald Island Oil Field:*	
412	Standard Oil Company of California	3- 1-40

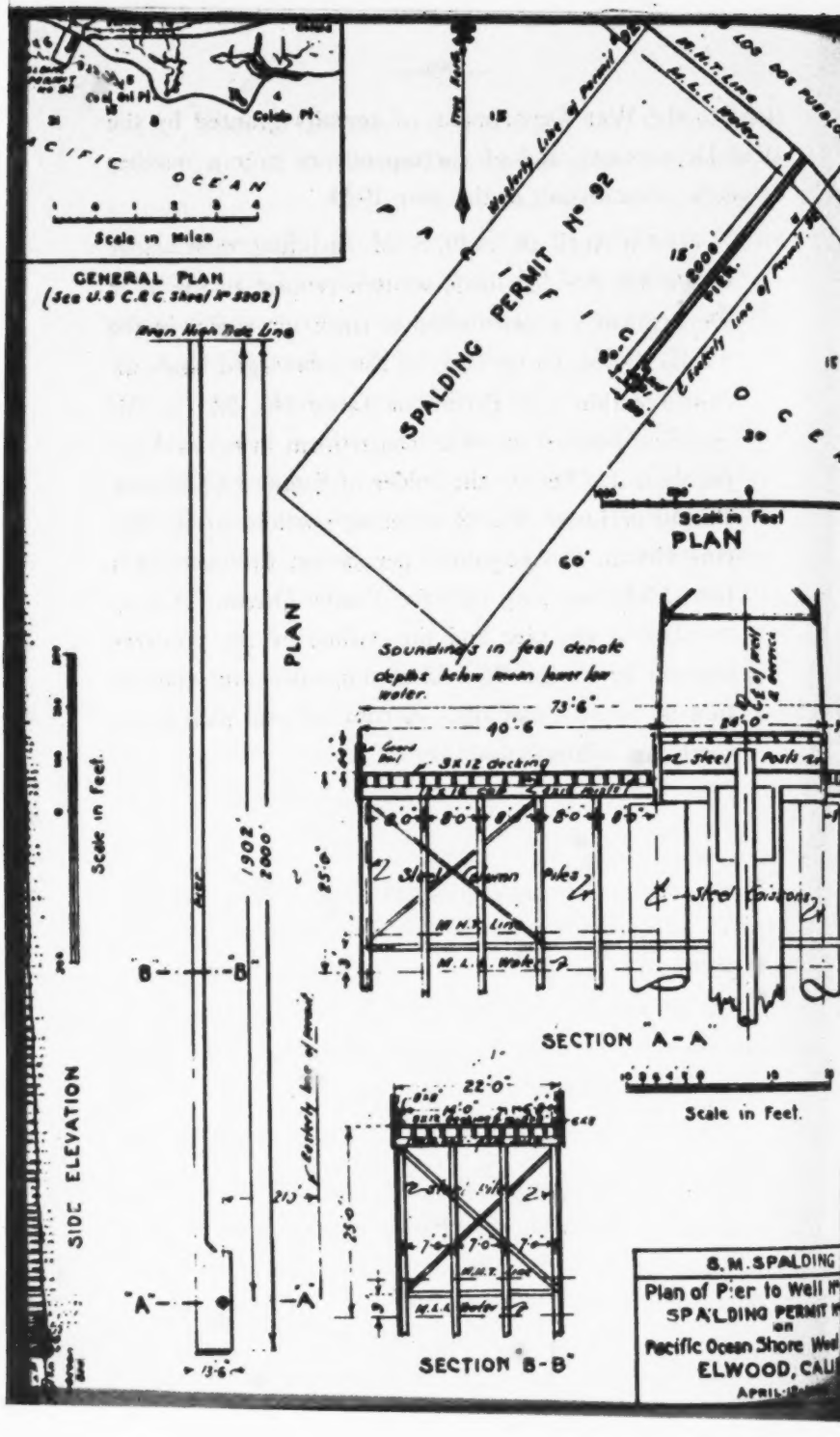
15. Under State tide and submerged land Chapter 303 leases, many of the lessees constructed piers and wharves or islands into the Ocean, in the Capitan, Goleta, Carpenteria, Summerland and Elwood Fields in the Pacific Ocean and Santa Barbara Channel thereof. Prior to commencement of construction of such wharves, piers or islands, the lessee in each instance (except in cases of wharves built in the Summerland Field prior to enactment of the 1899 Act of Congress requiring such application before placing any structure in navigable waters) made written application to the War Department for a permit to erect such structures in the Ocean pursuant to the requirements of the Act of Congress dated March 3, 1899, requiring such permit in any case where any structure was proposed to be placed in any navigable waters. In each instance the lessee making such application advised the War Department that he held a designated and numbered State of California tide and submerged land permit or lease.

A few examples of the many War Department permits, applications therefor, and data notifying the United States War Department of the proposed construction of piers, wharves and islands for the drilling of oil and gas from tide and submerged lands prior to commencement thereof, and subsequent data with respect to completions and alterations thereof, are as follows:

(a) State tide and submerged land lease No. 92 (portions of which are attempted to be described in Paragraph VI of the Complaint herein) was the subject of applica-

tions to the War Department, of permits granted by the War Department, and of correspondence over a number of years, commencing in the year 1929.

(i) On April 18, 1929, S. M. Spalding, then holder of Permit No. 92, made written request to the War Department for permission to construct a pier in the Pacific Ocean on portions of the submerged lands included within said Permit or Lease No. 92. S. M. Spalding notified the War Department in his said application that he was the holder of State of California Permit or Lease No. 92, covering portions of the Pacific Ocean, and requested permission to construct a pier 2,000 feet long into the Pacific Ocean. A map or plan of the pier and the outline of the property covered by Permit No. 92 accompanied said application of S. M. Spalding. A copy of said plan is set forth as follows:


GENERAL PLAN
(See U.S.C.&G.C. Sheet No 3202)
Scale in Miles
OCEAN
Coast Oil Pt.
Colubo Pt.
SPALDING PERMIT No 32
Westerly Line of Permit
Easterly Line of Permit
PIER
M.H.T. Line
M.L.L.W. Water
Scale in Feet
PLAN
Mean High Tide Line
1902'
2000'
Scale in Feet.
PLAN
Soundings in feet denote depths below mean lower low water.
SECTION "A-A"
SECTION "B-B"
SIDE ELEVATION
S. M. SPALDING
Plan of Pier to Well
SPALDING PERMIT
on
Pacific Ocean Shore
ELWOOD, CALI
APRIL

(ii) On May 4, 1929, the War Department granted S. M. Spalding a permit to construct said pier 2,000 feet long into the Pacific Ocean at Elwood, in accordance with the plan last above set forth, and in the body of said permit stated that the permission was in accordance with the plan shown on drawing attached to said permit, reading:

> "S. M. Spalding, Plan of Pier to Well No. 1 in Spalding Permit No. 92 on Pacific Ocean Shore West of Elwood, Calif.—April 12, 1929."

(iii) On September 26, 1929, Pacific Western Oil Company addressed a communication to the War Department, through its United States District Engineer at Los Angeles, advising that it was the holder of said Lease No. 92, stating, in part, that:

> "We are the holder of Lease No. 92, granted us by the State of California under date of September 10, 1929, for oil and gas development purposes, covering certain tide and submerged lands in the Pacific Ocean, Santa Barbara County, shown upon the attached plans. We are also the Lessee under an oil and gas lease dated May 10, 1929, from the littoral owners of the uplands adjoining said Lease No. 92.
>
> "For the purpose of performing the work contemplated under the terms of said Lease No. 92, we request a permit for the construction of an extension to the pier authorized under Permit granted by you to S. M. Spalding under date of May 4, 1929, (which Permit we acquired by Assignment dated May 10, 1929) and oil well derrick foundations along the whole length of said

pier as extended, and for the construction of additional piers and oil well derrick foundations along the same, all according to the plans attached hereto."

(iv) On October 9, 1929, the War Department issued its permit to Pacific Western Oil Company authorizing an extension to the pier and well foundation and the construction of two additional piers and foundations extending into the Ocean 3662 feet on submerged lands included within State Lease No. 92 in accordance with a plan attached to said permit, pursuant to request of said Company dated September 26, 1929. Said permit reads, in part, as follows:

"you are hereby authorized by the Secretary of War to construct an extension to pier and foundation authorized by permit of May 4, 1929, to S. M. Spalding, the pier to extend into the ocean about 3,488 feet from mean high tide line, and also to construct two additional piers and foundations, the piers to extend into the ocean about 3,662 and 3,468 feet from mean high tide line, in Pacific Ocean, at Elwood, California, in accordance with the plans shown on the drawing attached hereto marked 'Pacific Western Oil Co. Plan of Piers For Wells State Lease No. 92 on Pacific Ocean Shore West of Elwood—Calif. September 24, 1929.'"

(v) On November 17, 1932, Pacific Western Oil Company addressed a communication to the District Engineer at Los Angeles, requesting an extension of time for the completion of the piers as conditioned in said permits last above mentioned, covering State Lease No. 92. On November 28, 1932, the United

States Engineer Office gave written permission to Pacific Western Oil Company, extending time for completing said wells, as requested.

(vi) On July 12, 1933, Pacific Western Oil Company addressed a communication to the United States District Engineer Office at Los Angeles, advising of the completion of work to that date and of the work then under progress in constructing piers and other structures under Lease No. 92. Said communication reads, in part, as follows:

> "The undersigned is the holder of State Lease No. 92, issued to us by the State of California under date of September 10, 1929, for oil and gas development purposes, and covering certain tide and submerged lands in the Pacific Ocean, Santa Barbara County, California, shown on the attached plans. We are also the lessee under an Oil and Gas Lease, dated May 10, 1929, from the littoral owners of the uplands adjoining said Lease No. 92.
>
> "For the purpose of continuing the performance of the work contemplated under the terms of said State Lease No. 92, we request a permit for the construction of a lateral pier to extend at right angles from the pier shown on 'Plan of Pier to Well No. 1' issued to S. M. Spalding under date of May 4, 1929, the extension of which pier is shown as pier 'A' on that certain Plan of Piers issued to the undersigned under date of October 9, 1929, from a point on said pier 'A' approximately 1500 feet from mean high tide line (said point being midway between the present wells Nos. 92-6 and 92-9), said lateral pier to be approximately 465 feet in length and 16 feet in width, all as shown in red on the enclosed plan.

"We are enclosing herewith, a reproduced tracing, together with three blue line copies, showing thereon in black lines the completed portions of all piers, on the above lease as of this date, the construction of which has been approved by you, and showing in a broken black line the piers authorized but not yet completed, and showing in red lines the proposed location of the lateral pier, the permit for the construction of which is herein requested."

(vii) On July 31, 1933, a War Department permit was issued to Pacific Western Oil Company, granting permission to construct a lateral pier into the Pacific Ocean on State Lease No. 92, as applied for in said request of July 12, 1933.

(viii) On August 18, 1933, Pacific Western Oil Company addressed a communication to the United States District Engineer at Los Angeles, advising of a change in design of the proposed pier, and requesting permission to relocate the lateral pier in a designated position on the submerged lands in accordance with a plat enclosed therewith. Pursuant thereto on August 29, 1933, a War Department permit was granted to Pacific Western Oil Company, authorizing the relocation of the pier, as requested in said application of August 18, 1933, and as shown on a plan attached to said permit.

(ix) On March 18, 1934, the War Department issued a further permit to Pacific Western Oil Company, pursuant to its request of March 8, 1934, authorizing the construction of an extension to the pier and foundation, and also to construct two additional piers on modified plans as set forth on a plan attached to said permit.

(x) On March 29, 1935, a further War Department permit was granted to Pacific Western Oil Company, pursuant to its request of March 11, 1935, authorizing the construction of an extension to an existing pier on submerged lands covered by State Lease No. 92, in accordance with plan attached to said permit.

(xi) On May 6, 1935, a further War Department permit was granted to Pacific Western Oil Company

> "to widen and lengthen a pier located on State Tideland Lease No. 92 near Elwood, Santa Barbara County, California."

in accordance with plans shown on the drawing attached to said permit.

(b) On September 30, 1927 Pan American Petroleum Company addressed a communication to the United States District Engineer's Office at Los Angeles and requested a permit to construct a bulkhead and breakwater around a well about 9 miles northwest of the Town of Ventura, in Ventura County, furnishing a detailed map thereof. Said communication then stated:

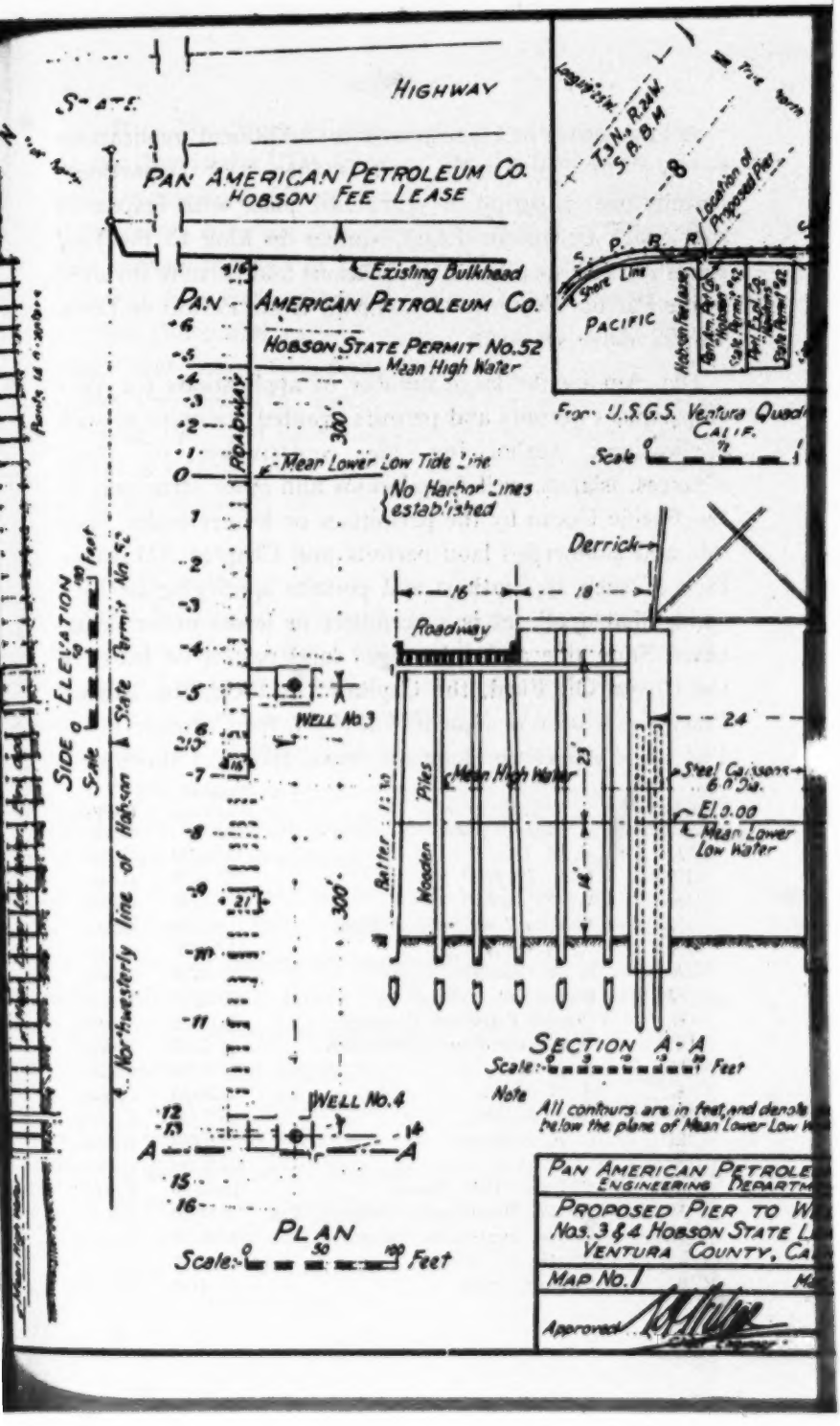
> "We hold this land under a permit from the State of California. We are entering into a contract with the State of California."

On October 14, 1937 the United States War Department, through its United States District Engineer's Office granted a written permit to Pan American Petroleum Company to construct said bulkhead "in the Pacific Ocean" in accordance with plans shown on the drawing attached to said permit marked "Pan American Petroleum Co. Engineering Department Bulkhead Protection for State Well No. 1, Ventura County, Calif."

A long series of correspondence, additional applications to the War Department, and further War Department permits over a period of years took place with respect to said State Permit or Lease, similar in kind to the long series of correspondence, applications and permits involved in the Pacific Western Oil Company State Permit or Lease No. 92 above set forth.

(c) Application was made on March 12, 1928 by Pan American Petroleum Company to the War Department for its permit to construct a pier and foundations thereunder for wells designated as "Wells Nos. 3 & 4 Hobson State Lease Ventura County, Calif."

A permit was issued by the United States War Department on March 22, 1928 granting Pan American Petroleum Company the right to construct a pier and foundations thereunder "in the Pacific Ocean" in accordance with drawings attached to said permit. The map attached thereto shows the outlines of two areas "in the Pacific Ocean", one designated "Pan Am. Pet. Co. 'Hobson's' State Permit #52"; and the other "Petl. Expl. Co. 'Hawkins' State Permit #42." A copy of the map attached to said permit dated March 22, 1928, is set forth as follows:


HIGHWAY
PAN AMERICAN PETROLEUM CO.
HOBSON FEE LEASE
Existing Bulkhead
PAN AMERICAN PETROLEUM CO.
HOBSON STATE PERMIT No. 52
Mean High Water
ROADWAY
300'
Mean Lower Low Tide Line
No Harbor Lines established
WELL No. 3
WELL No. 4
300'
Northwesterly line of Hobson State Permit No. 52
SIDE ELEVATION
Scale 0 100 Feet
PLAN
Scale 0 50 100 Feet
T.3N., R.24W. S.B.B.M.
Location of Proposed Pier
PACIFIC
From U.S.G.S. Ventura Quad. CALIF.
Scale 0 1
Derrick
16'
18'
Roadway
24
Steel Caissons 6'0" Dia.
Mean High Water
23'
El. 0.00
Mean Lower Low Water
Batter 12:1
Wooden Piles
14'
SECTION A-A
Scale 0 3 10 30 Feet
Note All contours are in feet and denote ... below the plane of Mean Lower Low ...
PAN AMERICAN PETROLE... ENGINEERING DEPARTM...
PROPOSED PIER TO W... Nos. 3 & 4 HOBSON STATE L... VENTURA COUNTY, CA...
MAP No. 1
Approved

A long series of correspondence, additional applications to the War Department, and further War Department permits over a period of years took place with respect to said State Permit or Lease, similar in kind to the long series of correspondence, applications and permits involved in the Pacific Western Oil Company State Permit or Lease No. 92 above set forth.

(d) Among the large number of applications for War Department permits and permits granted pursuant to such applications, authorizing the construction of piers, wharves, islands, well foundations and other structures in the Pacific Ocean by the permittees or lessees under State tide and submerged land permits and Chapter 303 leases, each of such applications and permits specifying or indicating that applicant is a permittee or lessee under designated State tide and submerged land permit or lease, in the Goleta Oil Field, the Capitan Oil Field, the Elwood Field, the Rincon or Seacliff Oil Field, the Carpenteria Oil Field, and elsewhere along the coast, are the following:

State Permit or Lease No.	Permittee or Lessee's Name	Date of War Dept. Permit	Oil Field Location
134	H. S. Chase	12/11/29	Goleta
139	L. G. Parker	11/ 9/29	Goleta
136	W. E. James	11/15/29	Goleta
133	Security-First National Bank	11/15/29	Goleta
137	A. W. Sands	11/ 6/29	Goleta
138	R. R. Crandall	11/ 9/29	Goleta
82	Rincon Oil Company	5/21/30	Seacliff
48	General Petroleum Company	7/10/28	Seacliff
81	Indian Petroleum Corporation	5/ 3/30	Seacliff
180	S. J. Dickey	2/21/30	Capitan
182	A. S. Hayes	2/21/30	Capitan
183	G. L. Ratcliffe	2/21/30	Capitan
181	C. E. Sampson	2/21/30	Capitan
179	W. C. Van Fleet	2/21/30	Capitan
88	Catherine Bell Cheney	10-10-29	Elwood
56	Seacliff Development Company, Ltd.	3/17-30	Seacliff
90	Elwood Exploration Company	8/20/29	Elwood
93	Caroline C. Spalding	10-14-35	Elwood
92	S. M. Spalding	5/ 4/29	Elwood

16. The State of California has granted in excess of one hundred (100) Chapter 303 Prospecting Permits and Leases, Public Resources Code Leases, and Easement-Agreements covering tide and submerged lands extending into various portions of the Pacific Ocean, Santa Barbara Channel, San Pedro Channel, Bay of Santa Monica, Bay of San Pedro and various arms of the sea. The lessees under said prospecting permits, leases and easements have drilled thereunder in excess of 350 oil and gas wells since the year 1921 and have expended as drilling and development costs (exclusive of operating and maintenance costs) in excess of twenty million ($20,000,000) dollars.

V.

Wharf franchises have been granted by the several County Boards of Supervisors of coastal counties under the authority of various Acts of the Legislature of the State of California, for the construction and maintenance of numerous wharves extending into the Pacific Ocean, and the bays, harbors and rivers of the State.

1. The first Act of the Legislature authorizing Boards of Supervisors of the several counties of the State of California to grant franchises to construct wharves on submerged lands of the State was approved April 8, 1858 (Stats. 1858, p. 120). Said Act was entitled "An Act to Authorize the Boards of Supervisors of the Several Counties of this State to Grant the Right to Construct Wharves on the Overflowed and Submerged Lands of this State."

By Act of the Legislature approved March 31, 1870 (Stats. 1870, p. 526), said 1858 Act was amended, providing, in part, as follows:

> "Citizens of this State are hereby authorized to build wharves, chutes and piers on the overflowed and submerged lands of this State by complying with the provisions of this Act. Any wharf, chutes and piers built

by authority of this Act shall not be more than seventy-five feet in width, and may extend into the water any distance that will not interfere with the free navigation. . . ."

Persons desiring to build such wharves on the "submerged lands of this State" were required by said Act to prepare a plan or map of such wharf and the land within 300 feet thereof, with the names of the owners of such lands and the names of the waters into which such wharf was proposed to be extended and to accompany said plan with an application to the Board of Supervisors of the county in which the proposed location is situated. Notice and hearing thereof was required. The Board of Supervisors was thereby authorized to grant the petitioner the right to erect the wharf as prayed for a term of years not exceeding twenty, with the further right to keep unencumbered a strip of submerged land on each side of the wharf not exceeding 150 feet and extending from high water mark to navigable water.

In the year 1872, the Legislature of the State of California incorporated the provisions of said Act of 1858, as amended in 1870, as aforesaid, into and made it a part of Political Code Sections 2906 *et seq.* Said Section 2906 was amended by Act of the Legislature of 1913. (Stats. 1913, p. 947.)

In the year 1937, Sections 2906 *et seq.* of the Political Code were made a part of Harbor and Navigation Code, becoming Sections 4000 *et seq.*

2. Numerous franchises to construct, maintain and operate wharves have been granted by the Boards of Supervisors of the various counties, authorizing such piers and wharves to be extended into the Pacific Ocean at various

places, as well as in bays, harbors, rivers and lakes. A few of the many wharf franchises thus granted for the construction and operation of wharves in and upon portions of the Pacific Ocean are the following:

(a) On August 13, 1868, the Board of Supervisors of the County of Santa Barbara granted to Santa Barbara Wharf Company a franchise to construct and maintain a wharf

> "out into the channel in front of the Town of Santa Barbara"

extending 620 feet from ordinary high water mark.

(b) On January 4, 1871, the Board of Supervisors of the County of Santa Barbara granted a franchise to Joseph Wolfson to erect and maintain a wharf

> "over the tide and overflowed lands belonging to the State of California"

not exceeding 75 feet in width immediately in front of a designated lot in the Town of San Buenaventura, Santa Barbara County, and also the lands described as

> "a strip of overflowed and submerged land on each side of the center line of said wharf of one hundred fifty feet in width, provided, however, that said strip of submerged and overflowed land shall not extend beyond the eastern and western lines of Lots Nos. 1 and 4 of said Block No. 7 projected into the ocean."

(c) On February 7, 1871, the Board of Supervisors of the County of Santa Barbara granted a franchise to D.

W. Jones to erect a wharf in front of his land at Carpinteria, Santa Barbara County, over

> "a strip of the overflowed and submerged land on each side of said wharf one hundred fifty feet in width, from high water mark to navigable water."

(d) The Board of Supervisors of the County of Santa Barbara on July 1, 1878, granted a franchise to Frank Smith to construct a wharf from upland owned by said Frank Smith in the vicinity of Capenteria and

> "to extend the same into the Pacific Ocean eight hundred feet below low water mark."

On April 3, 1889, said Board granted a further franchise to Frank Smith to maintain his wharf at the location aforesaid

> "provided that said wharf shall not be of greater width than fifty feet and shall not extend into and over the waters of said Santa Barbara Channel for any distance of more than twelve hundred feet in length."

(e) On May 13, 1879, the Board of Supervisors of the County of Santa Barbara granted a franchise to Lewis St. Ores to construct a wire suspension chute from the rocky point called "Point Morito" into the Pacific Ocean

> "beginning at the shore end of said proposed chute, and extending into the Pacific Ocean nine hundred feet, with a right of way fifty feet in width and all necessary use for the purposes of said chute on and over the overflowed, submerged and tide lands belonging to the State at the location of said chute."

(f) On May 15, 1879, the Board of Supervisors of the County of Santa Barbara granted a franchise to William L. Hollister, *et al.* to construct and maintain a wharf at a point

> "bordering on the arm of the sea known as the 'Santa Barbara Channel' to a certain place on the shore thereof distant more or less three and three-quarters miles east of Point Arguello, the said location being more particularly designated and shown on the map and plan forming part of said petition."

Said franchise granted a further right of way

> "of any overflowed, submerged or tide lands belonging to this State for the distance of one hundred fifty feet on each side of said wharf; and also the right of way over any overflowed or tide lands lying between the wharf and the high and dry land, fifty feet in width—for twenty years; and also the right to have unencumbered and unobstructed the land and water on each side of the wharf from high water mark to navigable water, a distance of one hundred fifty feet, for the convenience of landing, loading and unloading, * * *."

On February 4, 1895, said Board of Supervisors granted a further franchise to the heirs of said W. L. Hollister *et al.* to construct and maintain a wharf

> "on the overflowed and submerged lands bordering on the arm of the sea called the Santa Barbara Channel, to the landing place known as La Gaviota."

Said franchise further stated in part

> "The said wharf is not to be of a greater width than seventy-five feet, and may extend to navigable water; * * *"

(g) On September 12, 1879, the Board of Supervisors of Santa Barbara County granted a franchise to J. F. More to construct and maintain a wharf at Goleta, Santa Barbara County

> "running out into the ocean, in a course south 17° west, 850 feet, the said location being more particularly designated on the map and plan thereof forming part of said petition."

Said franchise further granted a right of way to said wharf

> "over any overflowed, submerged or tide lands belonging to this State for the distance of one hundred fifty feet on each side of said wharf; * * * and also the right to have, unencumbered and unobstructed, the land and water on each side of the wharf from high water mark to navigable water, a distance of one hundred fifty feet * * *."

On July 2, 1900, said Board of Supervisors granted a further franchise to J. F. More to construct and maintain a wharf

> "extending over the waters of the arm of the sea known as the Santa Barbara Channel"

from La Goleta where the wharf of said More was then located. It was further provided that said wharf

> "may extend to navigable water."

(h) On July 9, 1885, the Board of Supervisors of the County of Santa Barbara granted a franchise to Frank M. Micherin to construct and maintain a wharf near the mouth of the Santa Ynez River, Santa Barbara County, and

> "extending into the Pacific Ocean one thousand feet"

and also granting a right of way to reach said wharf over

> "the overflowed, submerged or tide lands belonging to this State and over which it is proposed to extend said wharf as shown in said petition, the quantity thereof being all included in a rectangular tract one thousand feet long and seventy-five feet wide, extending into the point one thousand feet from the line of high water mark."

(i) The Board of Supervisors of the County of Santa Barbara on July 10, 1896, granted a franchise to H. L. Williams to construct a wharf

> "on the overflowed and submerged lands bordering on the arm of the sea called the Santa Barbara Channel at or near the Town of Summerland at Cary Place"

pursuant to the provisions of Sections 2892 and 2907 of the California Political Code.

(j) On April 4, 1898, the Board of Supervisors of Santa Barbara County granted a franchise to J. B. Treadwell to construct and maintain a wharf

> "extending into the Santa Barbara Channel from a point on the shore of said channel opposite to the southerly end of the street known as and named Cary Place in the Town of Summerland * * * and may extend it to and over the waters of said Santa Barbara Channel twelve hundred (1200) feet in length * * *."

A map accompanied the application of said Treadwell and a copy thereof is set forth as follows:

(k) The following is a partial list of some of the further wharf franchises granted by the Boards of Supervisors of the several counties to construct wharves into the Pacific Ocean, channels and arms thereof pursuant to said Act of 1858, as amended, and said Political Code sections above set forth:

	Ordinance Number	*Franchise Grantee*	*Date*	*Location*	*Distance into Ocean*
(i)	Santa Barbara County, #384	Associated Oil Company	4-1-18	Santa Barbara Channel at Gaviota	600 feet
(ii)	Santa Barbara County, #514	Tidewater Associated Oil Company	10-24-38	Santa Barbara Channel at Gaviota	600 feet
(iii)	Santa Barbara County	Alcatraz Company	8-16-97	Santa Barbara Channel at Gaviota	to navigable water
(iv)	Santa Barabara County	T. W. More	9-10-74	Santa Barbara Channel at Gaviota	to navigable water
(v)	Santa Barbara County	Rio Grande Oil Company	1-18-29	Elwood	700 feet
(vi)	Santa Barbara County	L. G. Dreyfus	1-11-32	Eagle Canyon Ranch	to navigable water
(vii)	Santa Barbara County	Oxnard Oil Company	1-4-1900	Summerland	
(viii)	Santa Barbara County	T. R. Bard	8-16-71	Hueneme	to navigable waters
(ix)	Santa Barbara County	Lompoc Valley Land Co.	8-7-76	Casmalia	to navigable waters
(x)	City of Santa Barbara	John P. Stearns	2-2-78	City of Santa Barbara	to navigable waters
(xi)	City of Santa Barbara 591	Stearns Wharf Co.	9-5-07	City of Santa Barbara	to navigable waters
(xii)	City of Santa Barbara #1370	Stearns Wharf Co.	1-27-28	City of Santa Barbara	to navigable waters

	Ordinance Number	Franchise Grantee	Date	Location	Distance into Ocean
(xiii)	San Luis Obispo County	E. S. Rigdon	9-8-03	San Simeon	710 feet
(xiv)	San Luis Obispo County	California Petroleum Refineries, Ltd.	4-4-06	Bay of San Luis Obispo	3000 feet
(xv)	San Luis Obispo County	L. A. Phillips	3-5-06	Bay of San Luis Obispo	3000 feet
(xvi)	San Luis Obispo County	W. E. Smith	10-8-07	Bay of San Luis Obispo	3000 feet
(xvii)	San Luis Obispo County	Pacific Coast Railway Company	12-2-13	Bay of San Luis Obispo	2622 feet
(xviii)	Ventura County 16	Hueneme Wharf Company	9-7-85	Hueneme	955 feet
(xix)	San Diego County 32	Oceanside Wharf Company	7-7-88	Oceanside	to navigable waters
(xx)	San Diego County 18	Coronado Beach Company	7-29-86	Bay of San Diego	340 feet

VI

The State of California has since 1931 regulated the construction and maintenance of groins, jetties, sea-walls, breakwaters and bulkheads upon, across, in, or over tide or submerged lands of the State in the Pacific Ocean, and in bays, harbors, rivers and lakes outside of certain municipalities.

1. By Act of the 1931 Legislature (Stats. 1931, p. 925) Section 690.10 of the Political Code was enacted. Said section authorized the Division of State Lands to grant to any owner of littoral lands the right to construct,

alter or maintain groins, jetties, wharves, sea-walls or bulkheads

> "upon, across or over any of the * * * *tide or submerged lands of this State* bordering upon such littoral lands,"

if such construction or alteration will not unreasonably interfere with the uses and purposes reserved to the people of the State.

2. By the Act of the 1941 Legislature said Political Code Section 690.10 was repealed and re-enacted as Public Resources Code Section 6321, *et seq.* The State Lands Commission was thereby empowered to grant like authority for the construction, alteration or maintenance of groins, jetties, etc. (Stats. 1941, p. 1880.)

3. At all times since the effective date of said Political Code Section 690.10 in the year 1931, the State of California, through its Division of State Lands and its State Lands Commission, has regulated and governed the construction, alteration and maintenance of groins, jetties, sea-walls, breakwaters and bulkheads in, over and across the tide and submerged lands owned by the State lying in the Pacific Ocean as well as those lying in bays, harbors, rivers and lakes, except in those cases where tide and submerged lands have been granted to municipalities and counties as hereinabove described.

(a) One illustration of the numerous permits granted by the State since 1931 to various littoral owners along the coast of California, are the permits granted to Union Realty Company, a corporation, to maintain two groins

upon State owned tide and submerged lands in the Pacific Ocean and Miramar Bay, Santa Barbara County. (*Katenkamp v. Department of Finance* (1935) 9 Cal. App. (2d) 343; *Katenkamp v. Union Realty Co.* (1936) 6 Cal. (2d) 765.)

(b) Other illustrations of easements granted by the State Lands Commission for the benefit of the United States are those granted to Columbia Construction Company in the Pacific Ocean off Catalina Island, described hereinabove in the Second Affirmative Defense hereof.

VII.

The several coastal counties of California in which are located submerged land oil fields, have, for many years, assessed the mineral interests in and under the tide and submerged lands covered by the State tide and submerged land leases granted under Chapter 303 of the 1921 Mineral Leasing Act approved May 25, 1921, as aforesaid, and the mineral rights under "easement agreements" granted pursuant to the 1933 amendment to said Mineral Leasing Act as aforesaid, and the mineral rights covered by Public Resources Code leases as aforesaid. In this connection defendant alleges that:

1. The County Assessor for the County of Santa Barbara has, for example, assessed the mineral rights to the lessees under the State tide and submerged land permits and leases in the Elwood oil field ever since the date of the discovery and development of said oil field. The following figures show the assessments for the County of Santa Barbara of the mineral rights to the State tide and submerged land lessees in the Elwood oil field from 1930, the approximate date of discovery of said field, through 1945, as follows:

(Consisting of State Tideland Leases Nos. 88, 89, 90, 91, 92, 93, 94, 98 and 129)

Year	Production in Barrels	Mineral Right Assessment
1930	* 1,784,045	$ 4,908,800.
1931	* 8,606,150	6,722,630.
1932	* 7,151,203	4,780,084.
1933	* 4,245,466	4,065,340.
1934	* 3,820,771	3,750,090.
1935	* 3,072,069	3,400,850.
1936	* 4,171,082	4,266,710.
1937	* 3,558,688	3,967,296.
1938	* 2,681,844	3,453,600.
1939	* 1,811,036	2,768,680.
1940	* 1,252,588	2,303,560.
1941	* 1,060,739	1,980,440.
1942	959,974	1,572,030.
1943	782,263	1,491,420.
1944	1,692,112	2,815,600.
1945	2,003,171	3,238,240.
Totals	48,653,202	$55,485,370.

*Approximate Figures

A personal property tax has been separately assessed by the County Assessor of Santa Barbara County upon the personal property improvements placed on or in connection with said State tide and submerged land leases. For ex-

ample, in the Elwood Oil Field, the County Assessor for Santa Barbara County has separately assessed the personal property improvements of the lessees who hold State tide and submerged land leases in said field. The following figures show the separate personal property assessment of said lessees from the years 1929 to 1938:

Year	Tax
1929	4,141.88
1930	20,843.48
1931	31,035.09
1932	25,934.46
1933	20,298.82
1934	18,460.00
1935	17,942.00
1936	19,267.00
1937	18,640.00
1938	24,000.00
	$200,562.73

The County Assessor for Santa Barbara County has also assessed the lessees under State Tide Land Leases Nos. 18 and 21 in the Summerland Oil Field from the year 1927 to the year 1938 (the latter year being the approximate date of abandonment of said leases) with the following assessments:

Summerland Oil Field

(Consisting of State Tidelands Leases Nos. 18 and 21)

Year	Mineral Right Assessment
1927	$ 400.
1928	400.
1929	400.
1930	400.
1931	400.
1932	400.
1933	400.
1934	400.
1935	400.
1936	1,460.
1937	1,460.
1938	1,610.
Total	$8,130.

The County Assessor for the County of Santa Barbara has maintained records and maps showing the location of each State tide and submerged land lease and the structures thereon including piers, wharves, islands, derricks and wells. As an illustration thereof there is set forth next hereinafter a copy of the Santa Barbara County Assessor's map of the "Mining Rights" of Pacific Western Oil Company under its State Tide and Submerged Land Lease No. 92, portions of said lease having been attempted to be described in Paragraph VI of the complaint herein. A copy of said map is set forth as follows:

A similar map record is maintained by the County Assessor for the County of Santa Barbara for each State tide and submerged land lease and in each of the submerged land oil fields in the said County.

2. The County Assessor for the County of Los Angeles has assessed the mineral rights covered by the agreement between the City of Long Beach and Long Beach Oil Development Company for the drilling for and operation of oil wells in the Pacific Ocean and Bay of San Pedro in the Long Beach Outer Harbor. There are separate agreements between the City of Long Beach and Long Beach Oil Development Company, each agreement covering a separate parcel and the parcels being designated "Parcel W," "Parcel X," "Parcel Y," "Parcel Z," and "Parcel J". Commencing with the year of the discovery and development of the wells in the Long Beach Outer Harbor by said Long Beach Oil Development Company in the year 1940, with respect to Parcels W, X, Y and Z, the County Assessor for the County of Los Angeles assessed the mineral rights to Long Beach Oil Development Company and has done so each year thereafter. The following is a schedule of the assessments by the Los Angeles County Assessor of the mineral rights under said agreement between the City of Long Beach and Long Beach Oil Development Company:

LONG BEACH OIL DEVELOPMENT COMPANY

Parcel	1940		1941		1942		1943		1944		1945	
	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Number of wells	Assessed value	Num of wel
J	-	-	-	-	-	-	-	-	-	-	$138,750	7
W	$269,265	9	$503,330	21	$652,205	30	$603,350	43	$730,370	73	729,650	94
X	318,870	12	275,860	12	301,695	13	266,160	13	300,090	16	355,800	22
Y	329,050	12	246,245	12	242,535	13	205,960	13	213,370	14	196,900	17
Z	92,675	7	26,960	8	29,745	8	27,010	8	48,840	11	181,230	29

VIII.

The Legislature of the State of California has asserted its ownership of the territorial waters of the State on the coast thereof by authorizing use thereof by the United States for military purposes in connection with conducting target practice operations by a 1941 Act of the Legislature (Stats. 1941, p. 1307; Government Code Sec 118). It is there provided as follows:

> "The State consents to the use by the United States of the territorial waters of the state adjacent to any land on the coast of the State now or hereafter owned by or under the control of the United States, and occupied for military purposes, in connection with conducting target practice operations of any type on the land. Before any of the waters are used in connection with conducting target practice operations of any type the United States shall take all appropriate measures and shall make and publish necessary regulations for the protection of the person and property of all persons using the waters. The use herein consented to shall not be so exercised as to interfere unreasonably with the public use of the waters.
>
> "(Nonliability of State.) This section shall not be construed to impose any liability whatsoever upon the State in connection with the use of the waters as herein set forth."

Fourth Affirmative Defense.

1. Plaintiff, United States of America, its judicial, legislative and executive branches and various of its departments and agencies, have uniformly (with the single exception mentioned at page 6, *supra*) treated all lands under navigable waters on the open coast of California as being owned by the State of California ever since the year 1850 equally with the ownership by the State of all lands under all navigable waters within the exterior boundaries of the State lying below the line of mean high water mark. No distinction has ever been made or attempted until the No distinction has ever been made or attempted by the United States until the last few months between lands below low water mark under navigable waters situated on the navigable waters within harbors, bays, rivers and lakes.

2. The courts of the United States, the Department of the Interior and the Secretary thereof, the United States Attorney General, the War Department, and various other departments and agencies of the United States have on innumerable occasions over a period of many decades decided, determined and asserted that the State of California owns all lands under all navigable waters within its boundaries, whether such lands lie below the line of mean low water mark on the open coast or are below mean high water mark located within bays, harbors, rivers and lakes.

3. Reference is hereby made to the allegations of the Second Affirmative Defense hereof for the details of the foregoing matters mentioned in this Fourth Affirmative Defense.

Fifth Affirmative Defense.

1. On or prior to September 9, 1850, the State of California became, ever since has been, and is now the owner of all tide and submerged lands within the boundaries of said State.

2. Thereafter the State of California granted a portion of said tide and submerged lands under the navigable waters of San Francisco Bay to one Tichenor, whose said interest was transferred and became vested in Mission Rock Company. Said grantee and its successors in interest thereafter reclaimed such lands from the waters of San Francisco Bay and made it upland adjacent to certain small islands therein, known as "Mission Rock."

3. Thereafter, the United States of America, acting by and through the President, the Secretary of the Navy, and the Attorney General, made claim, for naval purposes, in and to said tide and submerged lands so granted to said Tichenor. The United States thereupon brought suit in the United States District Court to eject said Mission Rock Company from said tide and submerged lands.

4. Thereafter said case was appealed to the United States Supreme Court, which court finally adjudicated the rights of the parties, and determined: (1) that the United States had no right, title, interest, or estate in or to said lands so reclaimed from beneath the navigable waters of San Francisco Bay; (2) that the United States had no right, title, interest or estate in or to tide and submerged lands in the State of California; (3) that the said State became vested with "the absolute property in * * * all

soils under the tide waters within her limits"; (4) that Mission Rock Company owned said reclaimed tide and submerged land by virtue of the grant made by the State of California to its predecessor in title. The opinion of the United States Supreme Court in said case was reported in *United States v. Mission Rock Company,* 189 U. S. 391; 47 L. Ed. 865, and the judgment of the Supreme Court of the United States became final, in accordance with its said decision.

5. The lands sought to be described in the Complaint herein are alleged by said complaint to be submerged lands within the boundaries of the State of California situated below the line of mean low tide of the Pacific Ocean.

6. All tide and submerged lands underlying all navigable waters within the boundaries of the State, passed to the said State as a unit and by virtue of the same recognition and confirmation of its sovereignty in and to the same. By reason of the said unity and common and single basis of title of all tide and submerged lands held by the said State prior to and after September 9, 1850, the question of title in and to all such lands located within the boundaries of the State of California by virtue of the adjudication in said case of *United States v. Mission Rock Company,* became and is ***res adjudicata*** and ***stare decisis*** by and between the United States of America on the one hand, and the State of California, its grantees, lessees and successors, on the other hand.

Sixth Affirmative Defense.

1. Defendant hereby incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses of this Answer.

2. The United States of America has acquiesced in and recognized the title of the State of California and its grantees in and to all tide and submerged lands within the borders of the State of California for a period of approximately 95 years last past by reason of the matters and things hereinabove alleged. The United States of America is thereby precluded from asserting or claiming any right, title or interest adverse to the title and ownership of the State of California and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by plaintiff) as thus acquiesced in and recognized by the United States.

Seventh Affirmative Defense.

1. Defendant incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses hereof.

2. By reason of the matters and things hereinabove alleged, the United States of America is estopped from claiming or asserting any right, title or interest in and to the tide and submerged lands lying within the exterior boundaries of the State of California adverse to the title and ownership of said State and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by the United States).

Wherefore, defendant prays as follows:

1. That a master be appointed to take evidence of the issues framed by the complaint, by this answer and by the affirmative defenses hereof.

2. That plaintiff take nothing by its complaint herein.

3. That defendant recover its costs and expenses incurred herein to be taxed by this Honorable Court; and

4. For such other, further and different relief as this Honorable Court may deem proper.

ROBERT W. KENNY,

Attorney General of the State of California.